

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

74-2677

IN THE
United States Court of Appeals
For the Second Circuit

No. 74-2677

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

against

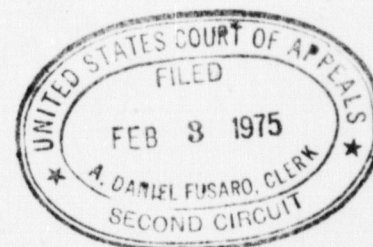
MARTIN L. ROEMER,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

LA ROSSA, SHARGEL & FISCHETTI
Attorneys for Appellant
Martin L. Roemer
522 Fifth Avenue
New York, New York 10036
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DOCKET ENTRIES

THE UNITED STATES

vs.

MARTIN L. ROEMER and
FRITZ CLAUDIUS MINTZ

PROCEEDINGS

2-25-70 Filed indictment.

2-25-70 BOTH DEFTS - Bench Warrants ordered and
issued. WEINFELD, J.

3- 5-70 MARTIN L. ROEMER (atty. present) Pleads NOT
GUILTY. Released on own recognizance. Deft.
ordered fingerprinted. Bench Warrant vacated.
Motions ret. 4-7-70. Service U.S. Atty.
4-2-70. MURPHY, J.

4- 6-70 MARTIN L. ROEMER. Filed motion and affidavit
by Jack S. Hoffinger for discovery and inspec-
tion. Ret. 4-14-70

4- 6-70 MARTIN L. ROEMER: Filed motion to dismiss
indictment for failure to state a crime. By
Jack S. Hoffinger, Mem of Law in support of
motion to dismiss. Ret. 4-14-70

4- 6-70 MARTIN L. ROEMER: Filed motion to dismiss
indictment as indefinite and uncertain, memo
of law, by Jack S. Hoffinger. Ret. 4-14-70

4- 6-70 MARTIN L. ROEMER: Filed motion for bill of particulars, memo in support, by Jack S. Hoffinger. Ret. 4-14-70.

4- 9-70 Filed Govt. Affidavit in response to motions of deft. ROEMER.

4-10-70 Filed Govt. memo of law in response to defts. motions. ret. 4-14-70.

4-14-70 MARTIN L. ROEMER - RE: to inspect & copy, B/P to dismiss indictment - argued - decision reserved. MURPHY, J.

6- 2-70 MARTIN L. ROEMER: RE: discovery & inspection, B/P, Dismiss indictment (see memorandum & order) (filed in 70 Cr. 126) (mailed notice). MURPHY, J.

7-15-70 Filed B/P

8-21-70 Filed copy of Warrant of Arrest dtd. 2-25-70 & entered Marshal's return. Warrant returned unexecuted 8-18-70 (filed in 70 Cr. 126a).

3-12-71 Filed Order reassigning this case to Judge Lasker under General Rule 2. EDELSTEIN, J.

4-19-71 Filed transcript of record of proceedings, dated Dec. 30, 31, 1970.

7-13-71 Filed affdvt. of Morton Penn.

7- 1-71 Both Defts. Closed statistically because defendant, co-defendant is a fugitive. In all other respects this case is still pending.

5-17-72 Filed - Affdvt. of Richard Ben-Veniste, Affvt. is submitted in opposition to deft's motion, adopting the facts and arguments set forth by deft. Donald F. Carone (indict. 70.132), to dismiss the indictment.

7-13-72 Filed transcript of record of proceedings, dated 4-18-72.

12- 8-72 Roemer - Docketed affidavit and notice of motion to dismiss indictment.

12- 8-72 Roemer - Docketed reply affidavit.

12- 7-72 Both defts.-Filed opinion #39002 by Judge Lasker on defts motions to dismiss indictment, granted.

1-4-73 Filed pl's notice of appeal to U.S.C.A. 2d Cir. from order of 12/5/72 dismissing indictment. Mailed copies to def. Martin L. Roemer, 214 Taylor Road, Paramus, N.J. and def's atty. Hoffinger & Stuart, 21 East 40th St., N.Y. 10016.

1-30-73 Roemer-Filed notice that the record on appeal has been certified and transmitted to the U.S. C.A.

Date Illeg-
ible BOTH DEFENDANTS: FILED JUDGMENT FROM U.S.C.A. FOR THE SECOND CIRCUIT. APPEAL FROM THE ORDER OF U.S.D.C. FOR S.D.N.Y. IS DISMISSED FOR LACK OF JURISDICTION. IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT THE PETITION FOR A WRIT OF MANDAMUS BE AND IT HEREBY IS GRANTED IN ACCORDANCE WITH THE OPINION OF THIS COURT.

8- 9-74 MARTIN L. ROEMER - Filed Gov't notice of readiness for trial.

8-14-74 MARTIN L. ROEMER-(atty present) Pre-trial conference held. Trial Oct. 29, 1974. Motions returnable by Sept. 20, 1974...Wyatt, J.

9-19-74 MARTIN L. ROEMER-Filed Govt's memorandum in opposition to deft's. motion for dismissal.

9-20-74 MARTIN L. ROEMER-Filed Deft's affirmation in support of motion to dismiss indictment.

9-23-74 MARTIN L. ROEMER-Filed Memo. Endorsed on Deft's motion dated 9-20-74. Motion denied except as to particulars as dictated in open Court. SO ORDERED...Wyatt, J. (mailed notice).

10- 2-74 BOTH DEFENDANTS-Filed Govt's. supplemental bill of particulars.

10-24-74 MARTIN L. ROEMER-Filed Govt's amendment to bill of particulars.

10-29-74 MARTIN ROEMER-Trial begun with a jury as to deft. Roemer. Govt's motion to sever granted.

10-30-74 Trial cont'd. .

10-31-74 Trial cont'd.

11- 1-74 Trial cont'd.

11- 4-74 Trial cont'd.

11- 6-74 Trial cont'd. Summations. Jury finds the deft. Roemer guilty. Sentence Dec. 12, 1974 at 2:00 p.m. Pre-Sentence investigation ordered. Cont'd. R.O.R....Wyatt, J.

12-12-74 MARTIN L. ROEMER-Filed JUDGMENT and ORDER OF PROBATION (atty present). It is adjudged that the deft. is sentenced to ONE (1) YEAR and FINED \$5,000. Execution of sentence of imprisonment is suspended. Deft. is placed on probation for a period of ONE (1) DAY. Fine to be paid within 60 days. Fine is a committed fine....Wyatt, J.

12-18-74 MARTIN L. ROEMER-Filed transcript of record of proceedings dated 10-29,30,31-74 & 11-1-74.

12-18-74

MARTIN L. ROEMER-Filed deft's notice of appeal from Judgment of Conviction as entered on 12-18-74. Notice mailed to Martin L. Roemer, 214 Taylor Road, Paramus, N.J. 07652 & U.S. Attorney's office.

A TRUE COPY

RAYMOND F. BURGHARDT, Clerk

By _____
Deputy Clerk

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

70 Cr. 130

MARTIN L. ROEMER and FRITZ
CLAUDIUS MINTZ,

Defendants.

-----X

The Grand Jury charges:

1. From on or about January 1, 1962, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, MARTIN L. ROEMER and FRITZ CLAUDIUS MINTZ, the defendants, and Morton Penn, named herein as a co-conspirator but not as a defendant, unlawfully, wilfully and knowingly did conspire, confederate and agree together and with each other, and with other persons to the Grand Jury unknown, to defraud the United States of and concerning its governmental functions and rights, herein-after described, to wit:

(a) of and concerning its right to have
its business and its affairs, and particularly

the transactions of the official business of the Army and Air Force Exchange Service, an instrumentality of the United States, conducted honestly and impartially, free from corruption, fraud, improper and undue influence, dishonesty, unlawful impairment and obstruction;

(b) of and concerning its right to have its officers and employees, and particularly the personnel of the Army and Air Force Exchange Service, transact their official business unhindered, unhampered, unobstructed and unimpaired by the exertion upon them of dishonest, corrupt, unlawful, improper and undue influence;

(c) of and concerning its right and governmental function of contracting, purchasing and ordering goods and services for the Army and Air Force Exchange Service through and by means of its officers and employees in the Army and Air Force Exchange Service

from various manufacturers of goods and service unhindered, unhampered, unobstructed and unimpaired by the exertion upon such officers and employees of dishonest, unlawful, corrupt, improper and undue influence;

(d) of and concerning its right to the conscientious, loyal, faithful, disinterested and unbiased services, decisions, actions and performance of his duties by the defendant MARTIN L. ROEMER, in his official capacity as an employee of the Army and Air Force Exchange Service, free from corruption, partiality, improper influence, bias, dishonesty and fraud resulting from his personal pecuniary interest in the success of the manufacturers' sale representative firms of the co-conspirator Morton Penn and the defendant FRITZ CLAUDIUS MINTZ in dealing with the Army and Air Force Exchange Service in the sale of goods and services and other matters.

2. It was part of such conspiracy that the defendant FRITZ CLAUDIUS MINTZ and co-conspirator Morton Penn would make payments and cause payments to be made to employees of the Army and Air Force Exchange Service, including the defendant MARTIN L. ROEMER, for the purpose of influencing them in the discharge of their duties, by encouraging such employees to purchase merchandise from firms represented by the defendant FRITZ CLAUDIUS MINTZ and co-conspirator Morton Penn and by entities controlled by them.

3. It was further a part of said conspiracy that the defendant MARTIN L. ROEMER would accept such payments for such purpose.

OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. From on or about February 25, 1965, to and including the date of the filing of this indictment, co-conspirator Morton Penn assisted in and supervised the New York operations of Uris Sales Corporation, Uris International, International

Sales Service Establishment, Optimus Establishment, International Sales Service GMBH, International Sales Service SA (Panama) and other firms controlled by himself and the defendant FRITZ CLAUDIUS MINTZ, used secret code names for buyers to be paid, used a paper shredder to destroy documents, and caused deposits and transactions to be made on behalf of such firms in numbered Swiss bank accounts, including Bank Leu, Zurich, Switzerland, Account Numbers 60854, 60904 (Code name - Gray), 13666 (Code name - Mime), and 60966, for purposes of having funds available for some of the payments to be made pursuant to the conspiracy.

2. In or about July, 1965, co-conspirator Morton Penn paid about \$2,500 to the defendant MARTIN L. ROEMER.

(Title 18, United States Code, Section 371)

FOREMAN

WHITNEY NORTH SEYMOUR, JR.
United States Attorney

MOTION TO DISMISS INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X

UNITED STATES OF AMERICA,

-against-

Indictment No. 70 CR 130

MARTIN L. ROEMER,

Defendant.

-----X

S I R S :

PLEASE TAKE NOTICE that, upon the annexed affirmation of JACK S. HOFFINGER, ESQ., attorney for the defendant herein, and upon all proceedings heretofore had herein, the undersigned will move this Court before the Honorable Inzer B. Wyatt on the 20th day of September, 1974, at 2:30 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, for an Order dismissing the indictment herein, pursuant to Rule 4 of the United States District Court for the Southern District of New York Plan for Achieving Prompt Disposition of Criminal Cases, Rule 48(b) of the Federal Rules of Criminal Procedure, and the Speedy Trial provision of the Sixth Amendment of the United States Constitution, and

for such other and further relief as to the Court may seem
just and proper.

New York, New York
September 5, 1974

Yours, etc.

JACK S. HOFFINGER
Attorney for Defendant
10 East Fifty-Third Street
New York, New York 10022

AFFIRMATION IN SUPPORT OF
MOTION TO DISMISS INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

No. 70 CR 130

MARTIN L. ROEMER,

Defendant.

-----X

I represent the defendant, MARTIN L. ROEMER.

I make this affirmation in support of his motion to dismiss the indictment pursuant to Rule 4 of the United States District Court for the Southern District of New York Plan for Achieving Prompt Disposition of Criminal Cases (hereinafter called "DISTRICT PLAN"), Rule 48(b) of the Federal Rules of Criminal Procedure, and Procedure (sic) and the Speedy Trial Provision of the Sixth Amendment of the United States Constitution.

Mr. Roemer was indicted in February of 1970, under 18 USC Section 371. The indictment (a copy of which is annexed as Exhibit "A") alleges a conspiracy commencing in 1962 among Messrs. Roemer, Mintz and Penn to defraud the United States through payments made to employess of the PX

System. Only one overt act is alleged with respect to Mr. Roemer - that during July of 1965, he was paid \$2500. by Mr. Penn - when Messrs. Mintz and Penn were acting as sales representatives for firms selling merchandise to the PX System. Mr. Roemer was a PX employee until August of 1966. The alleged purpose of the payment was to influence Mr. Roemer to approve the purchase of merchandise from firms represented by Mintz and Penn.

On December 5, 1972 - almost three years after the indictment was returned - Judge Lasker of this Court dismissed the indictment herein under Rule 4 of the Second Circuit's Rules regarding the prompt disposition of criminal cases. On June 11, 1973, the Court of Appeals reversed Judge Lasker by issuing a writ of mandamus, and ordered that the indictment be reinstated (U.S. v. Lasker, 481 F.2d 229).

Mr. Roemer's petition for re-hearing, with a suggestion rehearing en banc, was denied by the Court of Appeals on August 7, 1973. On August 10, 1973, three defendants (Carone, Carr and Ferguson), named in indictments which were part of the group dismissed by Judge Lasker and reinstated by the Court of Appeals, petitioned the Second Circuit to stay the

issuance of the mandate pending their application to the Supreme Court for a writ of certiorari. That petition was denied by the Second Circuit on September 3, 1973. Those three defendants proceeded nevertheless to petition the Supreme Court for a writ of certiorari, which was denied by the Supreme Court on March 18, 1974 (14 CrL. 4222).

Thereafter, by written "Notice of Readiness for Trial", dated August 9, 1974, the government advised Mr. Roemer that it would be "ready for trial on or after September 3, 1974, subject to receiving 30 days advance notice of the actual date for trial." A copy of the notice is annexed hereto as Exhibit "B".

We submit that the government has failed to comply with the District Plan. Its "Notice of Readiness", dated August 9, 1974, stating its readiness on or after September 3, 1974 subject to 30 days further notice, may conceivably fall within 6 months of the Supreme Court's denial of the application for certiorari. If it does, it certainly should not bind Mr. Roemer, who chose not to participate in that application. Mr. Roemer's last application was a petition for re-hearing, denied by the Second Circuit on August 7,

1973. And even if the petition for certiorari were in some way interpreted to be binding on Mr. Roemer, the 6 month period had to commence running no later than September 3, 1973, the date on which the Second Circuit denied the motion of the three defendants applying for certiorari to stay the issuance of the mandate. Any other view would nullify that ruling by the Second Circuit.

Beyond the question of the violation of the District Plan, there is the further question of Rule 48(b) of the Federal Rules of Criminal Procedure and Mr. Roemer's right to a speedy trial.

Mr. Roemer is married and has five children. After 20 years in the Army PX System, he resigned to enter private industry. Apart from this indictment, he had enjoyed an impeccable reputation. The indictment alleges a conspiracy beginning in January of 1962 - more than 12 years ago - and alleges one over act, with respect to Mr. Roemer, in July of 1965 - more than 9 years ago. The investigation in this matter commenced in October of 1966, when Mr. Mintz's records were seized in Europe. The indictment was not returned until February of 1970. A motion addressed to pre-indictment delay

was denied by this Court in April of 1970. Thereafter, the government, without notifying us, listed the case as a "Rule 5(e) exception". When called upon to explain the listing by Judge Lasker and to notify us, the government excused its failure to file a statement of readiness by maintaining that it was seeking to obtain the presence of Mintz and thereby avoid multiplicity of trials. That excuse obviously didn't wash with Judge Lasker, although it was persuasive in the Second Circuit.

Demonstrating a personal prejudice to a defendant by reason of delayed prosecution is a difficult proposition in any case. That is one of the reasons why the District Plan requires no such showing. The delay in this case is substantial, and the facts on which the crime is premised are in the distant past. It is almost impossible to reconstruct events. Any possible alibi defense, for example, has been ruled out as a result. We submit that the delay has become inexcusable.

For all the foregoing reasons, the instant motion should be granted.

Respectfully submitted

New York, New York
September 5, 1974.

JACK S. HOFFINGER

GOVERNMENT'S MEMORANDUM IN OPPOSITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-v-

MARTIN L. ROEMER,

70 Cr. 130 (IBW)

Defendant.

-----X

Preliminary Statement

Trial of the defendant Roemer is now scheduled for October 29, 1974. Defendant Mintz remains a fugitive.

By motion dated September 5, 1974, defendant Roemer moves for dismissal, alleging failure to comply with this court's Plan for Achieving Prompt Disposition of Criminal Cases and deprivation of the defendant's right to a speedy trial under Rule 48(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution. This memorandum is submitted in opposition to that motion.

Similar motions on substantially the same facts in two companion cases have already been denied by Judge Weinfeld,

on September 11, 1974 in United States v. Melville Bisgyer, 70 Cr. 129, and Judge Motley on September 3, 1974 in United States v. Albert Ferguson, 70 Cr. 131. (Judge Weinfeld's opinion annexed).

Statement of Facts

This indictment was returned on February 25, 1970, along with six other substantially identical indictments in United States v. Raymond F. Carr, 70 Cr. 126 (A.1)*; United States v. Dorothy L. Shea, 70 Cr. 127 (A.78); United States v. Lamont H. Munns, 70 Cr. 128 (A.110); United States v. Melville L. Bisgyer, 70 Cr. 129 (A.133); United States v. Albert Ferguson, 70 Cr. 131 (A.186); and United States v. Donald F. Carone, 70 Cr. 132 (A.215). The seven indictments, taken together, allege a scheme by which defendant Fritz Claudius Mintz and unindicted co-conspirator Morton Penn defrauded the United States by bribing employees of the United States Army and Air Force

*Numbers following the letter A refer to pages of the government's appendix filed with the Court of Appeals for the Second Circuit, which the Government will file with the Court as an appendix to this brief.

Exchange in return for contract awards to companies represented by Mintz and Penn. Each of the seven indictments names two defendants, Fritz Claudius Mintz and the alleged recipient of the bribe, charging them with one count of conspiring to defraud the United States in violation of Title 18, United States Code, Section 371. The only significant variations among the seven charges, besides the name of Mintz's co-defendant which is different in each indictment, are the overt acts charging payments from Penn to the recipients of the bribes.

In April, 1970, defendant Roemer moved for dismissal and discovery. Dismissal was denied, and in July, 1970, the Government filed its Bill of Particulars. (A. 164).

From the date of the indictment until March, 1972, the government regarded all seven of these cases as inappropriate for trial because of the fact that defendant Mintz remained a fugitive despite the government's efforts to apprehend him. See United States v. Lasker, 481 F.2d 229, 231 (2nd Cir., 1973). In March and May, 1972 defendant Roemer, along with his six companion defendants*, moved to dismiss the indictment

*In his motion papers defendant Roemer merely adopted the position expressed by his companion defendant Donald F. Carone.

against him, arguing, among other grounds, that he had been denied a speedy trial. By affidavits dated March 23 and 24, 1972, and May, 1972, the Government responded that the fugitive status of co-defendant Mintz brought these cases within the exception to the six-month rule created by Rule 5(e) of the Second Circuit Rules for the Prompt Disposition of Criminal Cases, but that it had never said it was unwilling to go to trial. (A. 28, 98, 130, 157, 183, 212, 266). In the Bisgyer and Shea affidavits, the Government also specifically notified the court and defense counsel that it would go to trial "at any time set by the court." (A. 98, 158).

In an opinion dated December 5, 1972, (A. 269) Judge Lasker dismissed all seven indictment. In that opinion Judge Lasker specifically observed that the Court was aware that the Government was, as of May, 1972, ready to go to trial against all defendants (A. 277). Judge Lasker based his decision on the Second Circuit Rules for the Prompt Disposition of Criminal Cases, holding that the Government's reliance on the Rule 5(e) exception had been unreasonable.

On June 11, 1973, the Court of Appeals granted the government's motion for a writ of mandamus directing Judge Lasker

to reinstate all seven indictments. United States v. Lasker, 481 F.2d 299 (2nd Cir., 1973). In so ruling, the Court of Appeals held that the Second Circuit Rules did not require the government to make a formal application under Rule 5(e) to extend the six-month period. Noting that the government had notified the District Court that it was ready for trial, 481 F.2d at 232 and 234, the Court concluded that Judge Lasker's dismissal of the indictment had been erroneous, and that he should have severed Mintz and scheduled the other defendants for early trials. The court also concluded that defendants' motion for dismissal under Rule 48(b) of the Federal Rules of Criminal Procedure and Sixth Amendment, although not reached by Judge Lasker, should have been denied. (481 F.2d at 237)

During June through September, 1973, defendant Roemer, along with defendants Carr, Carone and Ferguson, sought rehearing in the Second Circuit, which was denied.

In August, 1973, defendants Carr, Carone and Ferguson petitioned the Supreme Court for an extension of time to file a petition for certiorari sub nom Lasker v. United States, and on November 8, 1973 they filed a petition seeking

certiorari and reversal of the Court of Appeals order as to the indictments naming them. That petition was denied on March 18, 1974. Between then and now the United States Attorney's Office and the District Court learned of the Supreme Court's action, Judge Lasker reassigned the case to another judge; and now the case has been scheduled for trial. (Exhibits 1 and 2)

During the period between the Court of Appeals action in June, 1973 and the pretrial conference in August, 1974, counsel for defendant Roemer has never contacted either the Court or the government either to request a speedy trial or for any other purpose.

ARGUMENT

- I. BY NOTICING ITS READINESS FOR TRIAL, IN MARCH AND MAY, 1972, THE GOVERNMENT COMPLIED WITH THE SOUTHERN DISTRICT PLAN FOR PROMPT DISPOSITION OF CRIMINAL CASES.
-

Over two years ago, in March and May, 1972, the government notified the Court and defense counsel that it was ready to try these cases. (A. 277) By so doing, the government fully complied with the Southern District's Plan for Achieving Prompt

Disposition of Criminal Cases and the predecessor Second 4 of those rules*, upon which defendant here relies, requires only that the government be ready for trial. The Second Circuit has held the government's obligation under the rules to be satisfied when the government becomes ready for trial and provides some form of notification of its readiness to the Court. See, United States v. Pierro, 478 F.2d 386 (2nd Cir., 1973); United States v. Nathan, 476 F.2d 466 (2nd Cir., 1973); and United States v. Counts, 471 F.2d 421 (2nd Cir., 1973). Here the defense could hardly have been unaware of the government's readiness which was referred to in both the District Court and Second Circuit opinions on the motions to dismiss.

The facts that the government's statements of readiness occurred prior to the dismissal and reinstatement of the indictment, and that the government reiterated its readiness in its letter of July 25, 1974 (Exhibit 1) and again after six of the cases had been reassigned to different district

*The Southern District Plan adopted the Second Circuit Rules without any relevant change. United States v. Lasker, 481 F.2d 229, 232 n.1.

court judges*, are of no consequence here since the defendants and the Court had been previously notified of the government's readiness. The Court of Appeals so ruled in a similar situation in United States v. Masullo, 489 F.2d 217 (2nd Cir., 1973). There the court held that a notice of readiness remained in effect as to a superseding indictment filed subsequent to the notice. Even though the government had filed a second notice of readiness, subsequent to the superseding indictment, the court held the first notice to be the operative notice. Likewise here, the government's notification that it was prepared to try these cases, satisfied both the Second Circuit Rules and the subsequently adopted Southern District Plan. That notice of readiness predated the Court of Appeals decision in United States v. Lasker. Nothing has occurred since that decision relevant to the application of those rules to this case.

*The most recent notice of readiness, which defendant Roemer seems to rely on, was merely a convenient method by which the government could communicate its readiness to try these cases on notice adequate to schedule the appearance of witnesses who reside in Europe, to the six judges to whom the cases were reassigned on August 1, 1974. Judge Lasker was already aware of the status of these cases.

II. DEFENDANT ROEMER HAS NOT BEEN
DENIED HIS CONSTITUTIONAL RIGHT
TO A SPEEDY TRIAL.

We now turn to defendant Roemer's argument that he has been denied a speedy trial within the meaning of the Sixth Amendment to the Constitution and Rule 48(b) of the Federal Rules of Criminal Procedure.

At the outset, we note that the Second Circuit has already heard and rejected defendant Roemer's argument concerning the period prior to the Court of Appeals decision of June 11, 1973. During the entire period since June, 1973, defendant Roemer has not moved for an immediate trial. In fact, neither defendant Roemer nor any of the defendants in the six companion cases has ever demanded trial of these cases or requested the setting of a trial date. In fact, it was the government which, in argument of the defense's prior motion for dismissal, proposed speedy trial, a suggestion opposed by the defense which argued exclusively in favor of dismissal. Even taking that motion as an objection to pre-May, 1972 delay, the record is barren of any defense objection to the post-June, 1973 delay. The Supreme Court held, in Barker v. Wingo, 407 U.S. 514 (1972)

that failure of the defense to demand a trial date is a strong factor in determining whether the defense is prejudiced by delay. 407 U.S. at 531-2. See also United States v. Lasker, 481 F.2d 229, 237.

Here the reasons for the post-June, 1973 delay, and the defenses' failure to object, are apparent. The bulk of this period was consumed by the efforts of defendant Roemer's companion defendants to obtain reversal of the Court of Appeals ruling reinstating the indictments. Although defendant Roemer himself did not seek certiorari in the Supreme Court, it is clear that any reversal of the Second Circuit's ruling would have benefited him since the relevant facts as to all seven defendants were identical.* Had the defendants who did pursue the appellate litigation obtained dismissal of their indictments, either on speedy trial grounds or because the Court of Appeals exceeded its mandamus jurisdiction, the indictments

*In support of the petition for certiorari the petitioners argued primarily that the Court of Appeals had exceeded its jurisdiction in granting mandamus because, even assuming that the trial court was in error, the case was not appropriate for mandamus (Exhibits 3 and 4).

charging the other defendants, including defendant Roemer, would certainly have been dismissed as well.* Indeed, Rule 21(4) of the Supreme Court Rules clearly establishes that in the absence of a notice of lack of interest -- which was not filed by any of the seven defendants -- all parties to United States v. Lasker in the Second Circuit were automatically deemed parties to Lasker v. United States in the Supreme Court.

*Had three defendants been successful in the Supreme Court or on rehearing in the Court of Appeals, the government would probably have voluntarily accorded defendants identically situated the benefits of such a decision. Indeed, the Government would seem to have no choice. Defendant Bisgyer was in an excellent position to obtain any benefits flowing from the Supreme Court's disposition of the case. Rule 21(4) of the Supreme Court Rules specifically states that all parties in the Court of Appeals are parities to a petition for a Writ of Certiorari unless a notice that other parties have no interest in certiorari is filed with the Supreme Court and all parties below. Here no such notice was filed or served on the Government or Judge Lasker. Consequently, all parties to United States v. Lasker in the Court of Appeals were parties to the certiorari proceeding in the Supreme Court, and could have joined in subsequent proceedings, if certiorari had been granted. See Provident Tradesmens Bank and Trust v. Lumbermens Mut. Cas. Co., 411 F.2d 88, 97-8 (3rd Cir., 1969). In addition, since the petitioner in the Supreme Court was Judge Lasker, it seems that if the defendants had been successful, the resulting Supreme Court order would have reversed the entire Court of Appeals decision, affecting all seven defendants.

Under these circumstances Judge Lasker's action, holding these cases in abeyance until after resolution of the appeals, was entirely reasonable. To hold several trials which might have been rendered unnecessary by the Supreme Court's action on the pending petitions would have been an inefficient use of both the Court's and the defendant's resources. Clearly the sensible course was to wait until the completion of the Supreme Court action on the petition for certiorari before commencing trials of these indictments. The fact that Judge Lasker may have been under the impression that all seven defendants were seeking certiorari (Exhibit 2) is of no significance, since reversal of the Court of Appeals ruling as to any defendants would have benefited all of them.

In United States v. Cangiano, 491 F.2d 906 (2nd Cir., 1974), the Court of Appeals cited with apparent approval similar action by Judge Mishler. There Judge Mishler delayed a trial because a co-defendant had other litigation pending which might resolve legal issues affecting the complaining defendant.

These facts also explain why the defense made no motion for a trial date after June, 1973. Like the Court, the defense was waiting to see whether a trial would be necessary. Certainly

no one can seriously doubt that, if the Court of Appeals or the Supreme Court had reversed the order reinstating the indictments, that defendant Roemer would have sought to take advantage of that reversal and that he would have been successful. With the litigation in that posture, it would not have been in defendant Roemer's interest to go to trial while his companion defendants were continuing their efforts to uphold the District Court's dismissal of the indictments.* His interest in the continuing appellate litigation explains his failure to move for trial after June, 1973. At the very least, if defendant Roemer did not agree with the Court's holding of his case in abeyance pending the Supreme Court action, it was the defenses obligation to notify the Court of its objection to any further delay and of its desire to accept the government's well known offer of an immediate trial.

Defendant Roemer now argues that the Second Circuit's denial of a stay of the mandate, after it issued the writ of mandamus, constituted an order to the district court to go forward with trials despite the pending petition for certiorari. A more reasonable view of the Court of Appeals order is that it allowed the district court to go forward if it so desired but did not compel it to do so if it decided in its discretion, as Judge Lasker did, to hold the trials in abeyance until final resolution of the Supreme Court litigation.

CONCLUSION

Defendant Roemer's motion for dismissal of the indictment should be denied.

Respectfully submitted,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

FRANK H. WOHL
Assistant United States Attorney

- Of Counsel -

GOVERNMENT LETTER TO JUDGE LASKER

July 25, 1974

Honorable Morris E. Lasker
United States District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: United States v. Lamont H. Munns
United States v. Dorothy Lubkert Shea
United States v. Melville L. Bisgyer
United States v. Martin L. Roemer
United States v. Albert Ferguson
United States v. Donald F. Carone
United States v. Raymond F. Carr

Dear Judge Lasker:

This letter will confirm the telephone conversation of July 24, 1974 between Your Honor and Assistant United States Attorney Frank H. Wohl in which Mr. Wohl had called Your Honor's chambers to inquire as to Your Honor's plans for these cases.

As Mr. Wohl stated in that conversation, the Supreme Court has denied defendants' petition for certiorari. This action occurred during March, 1974. This office notified Your Honor's chambers of that action in May or early June, 1974 in a telephone conversation between Your Honor's secretary and Mr. Wohl. In that conversation, it was agreed that Mr. Wohl would write a confirming letter to Your Honor, and he recalls writing such a letter, although we are not now able to find a copy of it. Unless we find a copy of that letter, we will have to assume that it was never sent.

In any event, we request that trial dates be set for

these cases as soon as possible, but with thirty days' notice because these trials may require the Government to bring witnesses from outside the United States. We also request that United States v. Lamont H. Munns be scheduled for trial before the other cases.

Respectfully submitted,

PAUL J. CURRAN
United States Attorney

By: _____
FRANK H. WOHL
Assistant United States Attorney
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LETTER FROM CHAMBERS OF HON. MORRIS E. LASKER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
United States Courthouse
New York, New York 10007

July 31st, 1974

Frank H. Wohl, Esq.
Assistant United States Attorney
United States Court House
Foley Square
New York, New York 10007

U.S.A. v. Munns, Shea, Bisgyer, Roemer, Ferguson
Carone, Carr - Fritz Claudius Mintz

Dear Mr. Wohl:

I have your letter of July 25th. It goes without saying that I am more than distressed not have been told that the Supreme Court denied certiorari in the above cases until four months after that denial occurred, especially since these cases have been freighted all along with the issue of a lack of speedy trial.

Both because I believe that the cases are not truly related within the meaning of the rules of this court and in order to procure their speedy disposition, I have this day requested the Assignment Committee of the court to reassign by the wheel in Part I all of the cases except U.S.A. v. Munns, which you tell me the government wishes to try first.

As soon as I am advised by the Assignment Committee as to what action they are taking, I will be in touch with you.

Very truly yours,

/s/ MORRIS E. LASKER

1 qtrf 1

2 (Opening statement of Mr. Hoffinger followed
3 previous transcription)

4 THE COURT: Will you address the jury, Mr.
5 Hoffinger.

6 MR. HOFFINGER: Thank you, your Honor.

7 Judge Wyatt, ladies and gentlemen of the jury
8 and Mr. Wohl.

9 Mr. Roemer, my client, has been accused of the crime
10 of conspiring to defraud the United States. That is the
11 only charge in this case, the crime of conspiring to defraud
12 the United States.

13 He has asserted his innocence to that charge by
14 pleading not guilty and because he has pleaded not guilty,
15 wich is the only way you can plead innocent to an indictment,
16 the law obliques the Government, represented by Mr. Wohl,
17 to prove beyond a reasonable doubt that my client is,
18 in fact, guilty of the charge.

19 Now, you have heard what Mr. Wohl hopes to prove.
20 But contrary to what Mr. Wohl asserts, the evidence will
21 disclose that Mr. Roemer was a loyal and conscientious
22 servant of the PX and that he did not defraud or impede
23 or obstruct their workings at all.

24 The evidence will prove that he was a civilian
25 employee of the PX system for 20 years, with time out for

1 gtrf 2

2 military service. The evidence will further disclose that
3 Mr. Roemer spent all of that time working for the PX
4 in New York City, and that when the PX system was closing
5 shop in New York City in 1966 and moving to Dallas, Mr.
6 Roemer declined to go to Dallas and resigned to enter private
7 industry. He and his wife had just had their fourth
8 and fifth children, twins, prior to his resignation.

9 At the end of the entire case, after you have
10 heard all of what the Government hopes to prove, we are
11 confident that you will have reason to doubt that Mr. Roemer
12 conspired with anyone to be disloyal to the job which he
13 held for 20 years.

14 Thank you.

15 THE COURT: All right. The Government will call
16 its first witness.

17 MR. WOHL: The Government calls Ken Thompson.

18 K E N N E T H T H O M P S O N, called as
19 a witness by the Government, being first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WOHL:

23 Q Mr. Thompson, how are you presently employed?

24 A I'm employed by the Army and Air Force Exchange
25 Service.

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Q And how long have you been so employed?

A 26 years.

Q You were employed, then, by the Army and Air Force Exchange Service during the years of 1960 through 1966, is that correct?

A Yes, I was.

Q Where were you employed within the PX system at that time?

A At headquarters Army and Air Force Exchange Service on 14th Street here in Manhattan.

Q Could you just tell the Court and the jury an outline of the Exchange system at that time, during the years 1960 through 1966?

A Well, the Army and Air Force Exchange Service is an instrumentality of the United States --

MR. HOFFINGER: Objection, your Honor.

THE COURT: Overruled.

A It is an entity embracing all the properties, the personnel, the activities of the armed services that provide the Exchange Service in the Army and Air Force installations throughout the entire world, and it is primarily engaged in the business of selling merchandise through retail stores and also operating food activities, barbershops, beauty shops and so forth at the individual

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Thompson-direct

military installations throughout the world.

The regulations governing the Exchange are Department of the Army, Department of the Air Force regulations. It is governed by a board of directors, who are responsible to the Army and Air Force Secretary, the Secretary of the Army and the Air Force, for direction of the Exchange Service.

At that particular time the Chief of the Army and Air Force Exchange Service in the New York headquarters was responsible for developing uniform policies and procedures and for providing common support services. The actual operation of the activities throughout the world were the responsibility of the individual Army and Air Force major commanders and the installation commanders on which the activities were located.

Q Can you tell us how many of these Post Exchanges there were around the world during those years?

A Well, as far as activities, I'd say at that time about 1,500.

Q And what was the procurement system for the merchandise that was to be sold by these Exchanges?

A The procurement system was divided, really, into three phases.

If the Exchange was in the United States, the

1 gtrf 5 Thompson-direct

2 Exchange did its own procurement.

3 If the Exchange was overseas, if it bought
4 overseas merchandise or foreign merchandise, it did its own
5 procurement, but if it bought merchandise of United
6 States origin it was bought through either the New York
7 office, buying office, and its arm out in San Francisco.
8 At that time we had a small San Francisco buying office.

9 THE COURT: Mr. Wohl, to what years are you
10 referring? I just want to get that clear.

11 MR. WOHL: 1961 through 1966, I believe, your Honor.

12 THE COURT: And was that true during those years
13 as you described it?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right, go ahead.

16 Q Do you know where Mr. Roemer was employed --
17 I will withdraw that.

18 Do you know Mr. Roemer, the defendant here?

19 A Yes, I do.

20 Q Do you see him in court?

21 A Yes.

22 Q Would you identify who he is?

23 A Mr. Roemer (indicating).

24 MR. WOHL: May the record reflect he identified --

25 THE COURT: I suppose it is conceded, isn't it;

1 gtrf 6

Thompson-direct

2 Mr. Hoffinger?

3 MR. HOFFINGER: Yes, sir.

4 THE COURT: All right. The identification is
5 conceded.

6 Q Do you know where Mr. Roemer was employed during
7 the years 1961 through 1966?

8 A Yes. He was employed in the merchandising division,
9 then the procurement division -- it was the same division,
10 it just changed names -- in the headquarters on 14th
11 Street in New York here.

12 Q Could you describe for us the procurement system
13 that was then in effect, that is, the years 1961
14 through 1966, with reference to what Mr. Roemer's function
15 would be in that system?

16 A Mr. Roemer was a senior buyer during that period,
17 or later we changed the title to a buyer A, but basically
18 his responsibilities were the same. They could be
19 characterized as really three-fold; one, to do the actual
20 buying for the overseas Exchanges of merchandise of United
21 States origin, secondly, he would develop what we called
22 price agreements, letters of availability, catalogs
23 with various vendors for use by the Exchanges in the
24 United States and, finally, he would supervise a staff
25 within his particular department. As a senior buyer or a

1 gtrf 7 Thompson-direct

2 buyer A he would have other buyers working for him.

3 Those were the three main responsibilities which
4 he had.

5 Q Was there a term then in use of a contracting
6 officer?

7 A Yes.

8 Q Was he a contracting officer?

9 A He was a contracting officer. Beginning in the
10 latter part of 1962, beginning of 1963 any individual
11 who was authorized to commit Exchange funds was designated
12 a contracting officer, and Mr. Roemer, having that respon-
13 sibility, was designated a contracting officer.

14 Q At that time, that is the years 1961 through
15 1966, did the buyers -- I will withdraw that.

16 During those years there were also buyers
17 located in Europe, is that correct?

18 A Yes, sir.

19 Q Did those buyers during those years have the
20 authority to commit the Exchange system to buy goods from
21 particular manufacturers?

22 A They would have the authority to commit the
23 Exchange to buy goods from foreign sources, but they did
24 not have the authority to commit the Exchange to buy from
25 sources in the United States.

1 gtrf 8

Thompson-direct

2 Q Who had the authority to commit the Exchange
3 to buy goods from sources in the United States?

4 A The contracting officers either in the New York
5 office for overseas or the contracting officers that were
6 designated in the various Exchanges throughout the
7 United States.

8 Q Was Mr. Roemer one of those contracting officers?

9 A Yes, he was.

10 Q Did the Exchange system during that period of
11 time, as a routine matter, work with documents called
12 purchase orders?

13 A Yes. There were three main types of documents
14 that the overseas Exchanges would communicate their
15 requirements to the New York office. One was what they
16 called a purchase order master. It was a multilith
17 master just to expedite the administration of it.

18 Another was what they called a requisition
19 and then finally a special order form. But they
20 would communicate their requirements to the New York office
21 using these three forms.

22 Q Was it the routine practice for buyers in these
23 Exchanges located abroad to sign these purchase orders
24 before they sent them to the headquarters in New York?

25 A They would sign them usually, but not as the

1 gtrf 9

Thompson-direct

2 contracting officer. There would be two or three -- I think
3 there are three blocks down there and someone from the
4 overseas would sign it, but in the contracting officer block
5 the only individual who could sign that would be someone in
6 the New York office.

7 Q Could you explain for the Court and jury what
8 the routine was for the handling of these purchase orders
9 after they left the European Exchanges?

10 A Well, basically on the purchase or on the
11 multilith purchase order, multilith master, most of the
12 data would already have been included, and this would include
13 the description of the item, the cost price, the sell price,
14 the quantity that they wanted, the vendor. This was all
15 included already.

16 It would come into the New York office and they,
17 in turn, would check the thing over, analyze it, see
18 that everything was in order and then sign it.

19 Then it would go down -- it would be made up
20 into around 23 or 28 copies, of which three or four went
21 to the vendors and other copies went to our financing
22 officer, our transportation people and so forth.

23 Q During the years 1961 through 1966, was Mr.
24 Roemer one of the people who had authority to sign one
25 of these purchase orders?

1 qtrf 10

Thompson-direct

2 A Yes, he did.

3 Q Did he have discretion not to sign the purchase
4 order if he didn't agree with the way that purchase order
5 suggested merchandise be purchased?

6 A He had that discretion, but it was very seldom
7 done because, under the system at that time, the items that
8 they sold overseas and the quantities that they ordered
9 was determined by the overseas Exchange.

10 Now, if Mr. Roemer would get an order like that
11 where he had some question on it, he would normally,
12 under almost 100 per cent of the cases, take it up with his
13 immediate supervisor, who was a commodity group manager,
14 or if he wasn't available, with the chief of the purchasing
15 branch or with the department director or the director of
16 the procurement division.

17 Q Were there certain considerations that Mr. Roemer
18 was to take into account in deciding whether or not he
19 should approve or refrain from approving these purchase
20 orders as they came through?

21 A Well, the basic consideration, I think, was
22 that his responsibility was to purchase to the best advantage
23 of the Exchange Service, price and other conditions taken
24 into consideration. So normally the buyers in bringing
25 these orders up questioning them would question them on

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Thompson-direct

that basis, they didn't feel what came over from the overseas Exchange was to the best advantage of AAFES and they would bring it up on that basis.

Q If there was another manufacturer that had an item that was more advantage for the Exchange, it was then their responsibility, that is, the buyer's responsibility for the contracting officer's responsibility, to bring that to the attention of people in the Exchange system, is that correct?

A Right. This would be done originally on a routine basis. The buyer would either send a wire or a letter to the overseas Exchange and point this out to them saying, "I have found an item of better quality at a lower price and we would like to have you consider this."

The overseas would come back and say, "Yes, go ahead, no," for whatever reason, some of the reasons being that they would think that that item would not sell as well.

It isn't always the best value that sells well, because as far as the Exchange Service is concerned, it is primarily brand oriented and the average customer in the Exchange Service, who is the military man and his family, is a cross section of the United States and they are brand oriented, like many of the people in the United States.

1 qtrf 12

Thompson-direct

2 Q During the years 1961 through 1966, were there any
3 rules in effect within the Exchange system relating to
4 conflicts of interest between buyers and manufacturers?

5 A Yes. Every individual, when he comes to the Exchange
6 Service, he signs an affidavit to avoid conflict of interest,
7 but then as far as the buying was concerned everyone that
8 was connected with buying, not only the contracting officers
9 but procurement clerks and the like, were required to sign
10 a statement every year to reread the instruction and
11 direction in that regard and to sign a statement every year.

12 MR. WOHL: I ask that this document be marked as
13 Government's Exhibit No. 1 for identification.

14 (Government's Exhibit 1 marked for
15 identification.)

16 MR. WOHL: I request that this document be marked
17 as Government's Exhibit 2 for identification.

18 (Government's Exhibit 2 marked for
19 identification.)

20 MR. WOHL: May I hand them to the witness, your
21 Honor?

22 THE COURT: All right.

23 Q Mr. Thompson, I show you Government's Exhibit
24 No. 1 for identification, and I ask you whether you
25 recognize that form?

1 gtrf 13 Thompson-direct

2 A Yes.

3 Q Is that the form of the certificate of understand-
4 ing that was employed at the time reflected on the document,
5 that is, 1964, I believe, by the Army and Air Force Exchange
6 system?

7 A Right.

8 Q I ask you to look at Government's Exhibit No. 2
9 for identification, and I ask you if you recognize that form?

10 A Yes.

11 Q And was that form that was routinely employed
12 by the Exchange system at the time reflected thereon, that
13 is, 1966 for the certificate of understanding?

14 A Right.

15 Q Do you recognize the signatures on the two documents,
16 Exhibits No. 1 and 2 for identification?

17 A Well, to the best of my recollection, I do.
18 However, I would like to say as these are -- as it is in-
19 dicated here, these were personally addressed to the
20 individual contracting officers and each contracting
21 officer had to sign it and return it.

22 Q This was not an irregular thing, this was a routine
23 form that was signed by everybody, is that right?

24 A It was a routine thing every year, right.

25 MR. WOHL: The Government offers Exhibits 1 and 2

1 gtrf 14

Thompson-direct

2 for identification.

3 THE COURT: All right. Show them to counsel.

4 MR. HOFFINGER: Your Honor, may I have a short
5 voir dire on this?

6 THE COURT: Yes.

7 VOIR DIRE EXAMINATION

8 BY MR. HOFFINGER:

9 Q Mr. Thompson, does Government's Exhibit 1 and
10 2 for identification come from any particular governmental
11 file that is kept in connection with Mr. Roemer?

12 MR. WOHL: I will object to that. I don't think
13 it makes any difference.

14 THE COURT: Yes. I don't think that is a proper
15 voir dire.

16 Q Are these documents kept in the regular course
17 of business of the PX?

18 A Yes, they are.

19 Q Where are they kept?

20 MR. WOHL: Objection.

21 THE COURT: Yes. Sustained.

22 Q Is there a specific --

23 THE COURT: It may be on cross examination --

24 MR. HOFFINGER: I just wanted to identify them.
25 Okay, I have no objection.

1 gtrf 15

Thompson-direct

2 THE COURT: Are these documents signed by
3 Mr. Roemer?

4 THE WITNESS: To the best of my knowledge, they
5 are.

6 MR. WOHL: It is stipulated, your Honor, that the
7 signature on the documents is Mr. Roemer's signature.

8 THE COURT: Is that true, Mr. Hoffinger?

9 MR. HOFFINGER: Yes, that is true. Yes, we
10 stipulate.

11 THE COURT: Any objection?

12 MR. HOFFINGER: No objection.

13 THE COURT: All right. Mark them, Mr. Clerk.

14 (Government's Exhibits Nos. 1 and 2 respectively
15 received in evidence.)

16 MR. WOHL: May I read one of these to the jury,
17 your Honor?

18 THE COURT: All right.

19 MR. WOHL: The jury can see the two documents
20 are both typewritten documents on the letter head of
21 the Department of the Army and the Air Force and both of
22 them state, subject: "Certificate of Understanding, "
23 and to "Martin Roemer."

24 The Exhibit No. 1, dated January 28, 1964 states:
25 "I hereby certify that I have read and understand

that my employment with the Army and Air Force Exchange Service will be governed by the following policies relating to conflict between my private interests and official duties regardless of my duty assignment.

"A I am responsible for protecting the interests of the Government, as well as the Army and Air Force Exchange Service, and for maintaining the reputation of the Army and Air Force Exchange Service for honesty, courtesy and fair dealings. My conduct must be above reproach and suspicion at all times and in all cases avoid a position of conflict between self-interest and integrity.

"B If as an Army and Air Force Exchange Service employee I am responsible for negotiating or awarding contracts or for approving the payment of money due from a contractual award, I am disqualified from dealing with an individual, firm or corporation doing or seeking to do business with the Army and Air Force Exchange Service if I have any financial interest in or with such individual firm or corporation. Where I consider that I should be disqualified or I am uncertain as to qualifying because of possible conflict of interests, I will inform my supervisor.

"C I will not accept a gratuity from any individual, firm or corporation doing or seeking to do business

1 gtrf 17

Thompson-direct

2 with the Army and Air Force Exchange Service. Gratuities
3 may include, but are not limited to, money, entertainment,
4 hotel bills, vacations or merchandise. Any gratuity
5 offered will be refused in a courteous but conclusive
6 manner and I will promptly report such offer to my immediate
7 supervisor.

8 "D I shall not use my official authority or
9 influence for the purpose of interfering with an election
10 or effecting its results.

11 "E I shall not take any active part in political
12 management or political campaigns, except as otherwise
13 indicated in appendix to AR60-21 AFR 147-15."

14 Exhibit 2 is a substantially similar document
15 so I am not going to read that to the jury.

16 Should I pass it to Madam Foreman, your Honor?

17 THE COURT: No, I don't think that it is necessary.

18 BY MR. WOHL (Continuing):

19 Q Mr. Thompson, the buyers located in the particular
20 military Exchanges say, in Europe or elsewhere, would be
21 the ones in normal course to initiate procurement orders,
22 is that correct?

23 A Well, I would use the term initiate requirements.
24 When you use overseas and the United States, if it is an
25 item of U.S. origin overseas, they would initiate the

1 qtrf 18

Thompson-direct

2 requirement.

3 I draw a very fine distinction here because one
4 was saying, "I need this item, I need it in such and such
5 quantities." That came to the United States and then the
6 buyer in the New York office did the negotiation with the
7 vendor.

8 Now, in the United States, all of this was vested
9 in one individual. But as far as overseas was concerned,
10 there was a separation of these functions.

11 Q Were there any rules during 1961 through 1966 with
12 respect to communications of information relating to purchase
13 orders from buyers working for the Exchanges in Europe
14 to manufacturers or manufacturers' representatives?

15 A Yes. The regulation stated that there was not to
16 be any preliminary communication or negotiation on the
17 part of the individual overseas. In other words, the
18 manufacturer or his representative could show the merchandise,
19 present it to the buyer overseas, but no commitment
20 whatsoever was to be made by the buyer overseas.

21 Q Were there at that time that is, 1961 through
22 1966 -- I will withdraw that for a moment.

23 Was the overseas buyer to keep it a secret
24 from the manufacturer or the manufacturer's representative
25 in Europe that this purchase order had been initiated?

1 gtrf 19

Thompson-direct

2 Was that a rule?

3 A Well, he wasn't supposed to communicate that
4 information to him, so I will answer that yes, he was
5 supposed to keep it confidential.

6 Q During these years 1961 through 1966, did Mr.
7 Roemer have authority to initiate any requirements or
8 purchase orders?

9 A No. I will put it this way:

10 He could not on his own go out and buy something
11 for an Exchange in Japan. Someone in Japan had to say
12 that Mr. Roemer should buy something for them.

13 We were like any other retail business. Every
14 buyer overseas had an option to buy and he couldn't be
15 bringing merchandise into his particular department over and
16 above what he was authorized to do.

17 Q Was Mr. Roemer, during those years 1961 through
18 1966, performing duties with respect to any particular
19 type of merchandise?

20 A Yes. He had responsibilities for the electronic
21 department, which would consist of radios, phonographs,
22 television sets, record players, recorders, phonograph
23 records, and I think later on he had -- I think musical
24 instruments was included in there, and he had the
25 responsibility later on for home furnishings and for

gtrf 20

Thompson-direct

gifts, and I think toward the end of that period he also took over the sporting goods department.

Q During those years, that is, 1961 through 1966, were there entities operating in this field known as manufacturer's representatives?

A Yes.

Q Could you describe what the function of the manufacturer's representatives was?

A Well, this would apply both in the United States and overseas.

Often a manufacturer, for whatever reason he determined, would decide that he could not provide the sales force and the sales effort that is necessary to sell to the Exchanges, so he would employ a representative. He could contract with that individual and work out some contractual arrangement, and that representative, in turn, would represent the manufacturer.

Now, that representative may represent other manufacturers. He may have a number of lines. Usually he wouldn't have competing lines, but he would have a number of lines. So this was a common practice in dealing with the Exchange, it is a common practice today.

Q And was there a customary way that manufacturer's representatives were compensated for their services?

1 gtrf 21

Thompson-direct

2 A Usually a percentage of the orders.

3 Q And that would be paid from the manufacturer to
4 the representative?

5 A To the respresentative, right.

6 MR. WOHL: The Government has no further questions.

7 MR. HOFFINGER: May we have a two minute recess,
8 Judge?

9 THE COURT: All right. We will just sit here.

10 MR. HOFFINGER: Either way, Judge. If we could
11 just step outside --

12 THE COURT: Of course.

13 MR. HOFFINGER: Just a moment.

14 THE COURT: All right. We will wait for you.

15 MR. HOFFINGER: Thank you very much.

16 (Pause.)

17 CROSS EXAMINATION

18 BY MR. HOFFINGER:

19 Q Mr. Thompson, you have already testified that you
20 knew Mr. Roemer and you know Mr. Roemer now?

21 A Yes.

22 Q Did you know Mr. Roemer's immediate superior?

23 A Yes, I did.

24 Q And what was his name? I am talking about the
25 years 1961 through 1966.

1 gtrf 22

Thompson-cross

2 A Mr. Cox.

3 Q And what was Mr. Cox's position?

4 A He was a commodity group manager.

5 Q And could you explain to the jury what that means
6 in terms of Mr. Roemer?

7 A A commodity group manager would have a number of
8 senior buyers or buyer A under them.

9 In 1961 I think we had five commodity groups
10 and then we reorganized and it got down to four and we
11 finally ended up with three. But in all cases a commodity
12 group manager would have a senior buyer or a buyer A directly
13 under him.

14 Q And Mr. Roemer was directly under Mr. Cox?

15 A Right.

16 Q From 1961 through 1966, would you know how many
17 people Mr. Roemer had working for him, approximately?

18 A You mean at one time or over the whole period?

19 Q Suppose we take any one year, for example.

20 A I'd say as far as other contracting officers, he
21 would have three or four and then he would have a
22 number of procurement clerks. That, I'd say, would be one
23 to three for each executive under him, so whatever that would
24 come out.

25 Q So as I would understand it Mr. Roemer was in

qtrf 23

Thompson-cross

charge of a corps of people working for him?

A Right.

Q Mr. Roemer himself was supervised by a Mr. Cox?

A Right.

Q And who, if anyone, supervised Mr. Cox?

A Within the organization we had what was called a purchasing branch. The hierarchy was a headquarters Army and Air Force Exchange Service. Under that was a procurement division. Within the procurement division we had a purchasing branch, a transportation branch and a procurement management branch.

So over Mr. Cox was the chief of the purchasing branch, and he had an assistant.

Q In the years 1963, in 1964, 1965 -- let us go backwards.

In the year 1965, who was Mr. Cox's superior?

A The chief of the purchasing branch was Mr. Gilhooly. The assistant chief was either a Mr. Doreman or a Mr. Ousey.

Q Then to recapitulate again, we have in the years in question, we have Mr. Roemer, above him Mr. Cox and above Mr. Cox, Mr. Gilhooly?

A Right.

Q In terms of the hierarchy which I have created,

1 gtrf 24 Thompson-cross
2 which is a vertical hierarchy of Roemer, Cox and Gilhooly,
3 in the years 1963 or 1964, for example, would be on top of
4 that hierarchy or would be to the side of it, so to speak?
5 A The answer is yes, I was both places.
6 Q I see.
7 A I was a commodity group manager equivalent to
8 Mr. Cox, then I was chief of the procurement management
9 branch on the same level as Mr. Gilhooly, then later on
10 I became the deputy director of the procurement division
11 and Mr. Gilhooly worked for me.
12 Q What year was that?
13 A In 1965, April.
14 Q And you know Mr. Gilhooly fairly well?
15 A Very well.
16 Q And you know Mr. Cox very well?
17 A Very well.
18 Q And you knew Mr. Roemer very well, too, didn't
19 you?
20 A Very well.
21 Q Was it part of the function of Mr. Cox, Mr.
22 Roemer's immediate superior, to evaluate Mr. Roemer's
23 performance? Yes or no?
24 MR. WOHL: Objection.
25 THE COURT: May I have the question, Mr. Reporter?

qtrf 25

Thompson-cross

(Record read.)

THE COURT: I will permit it.

Go ahead.

A Yes.

Q And was it part of Mr. Gilhooly's function to evaluate the performance of Mr. Roemer?

A During what period?

Q During the period that Mr. Gilhooly was above Mr. Cox as the chief of I think you called it purchasing.

A Purchasing branch?

Q Yes.

A Mr. Cox would perform the evaluation, Mr. Gilhooly would review it.

Q Review the evaluation of Mr. Roemer?

A Review Mr. Cox's evaluation of Mr. Roemer.

Q And were such evaluations made in the regular course of PX business?

A Yes.

Q And were they or would they be contained in any particular set of books or folder in connection with Mr. Roemer?

MR. WOHL: I will object to that.

THE COURT: Yes. I think I will sustain the objection.

1 qtrf 25 Thompson-cross

2 Q These evaluations by Mr. Cox would be done in the
3 regular course of PX business you told us?

4 A Yes.

5 MR. HOFFINGER: May I have the 201 file,
6 please?

7 MR. WOHL: May we approach the bench, your
8 Honor?

9 THE COURT: All right.

10 Suppose I excuse the jury for lunch now and perhaps
11 we can come back at 2:00 o'clock and then we can deal with
12 these matters while the jury is having lunch.

13 Madam Foreman and ladies and gentlemen of the
14 jury, you may retire and we will take our luncheon recess
15 and we will try to dispose of this question during the luncheon
16 recess.

17 (Jury left courtroom.)

18 THE COURT: I assume that they want -- do you
19 want the witness excused now until we resume at 2:00
20 o'clock?

21 MR. WOHL: I think it would be a good idea,
22 your Honor. I don't think there is any dispute about what
23 he would say.

24 THE COURT: I beg your pardon?

25 MR. WOHL: I say I think the legal issue that
is now before the Court would not turn on what the witness

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1 gtrf 26

2 would say, so I don't see where we need him and I would think
3 it would be better to excuse him.

4 THE COURT: Mr. Thompson, will you come back
5 at 2:00 o'clock, then. You may be excused.

6 (Witness temporarily excused.)

7 THE COURT: I get the impression that we are
8 reaching a point where we would be getting to try the
9 issues as to whether Mr. Roemer performed his services in a
10 proper manner or not, and I think that is legally irrelevant,
11 isn't it?

12 MR. HOFFINGER: I think it is quite relevant, your
13 Honor.

14 THE COURT: Oh, no.

15 MR. HOFFINGER: Your Honor, it seems to me that one
16 of the issues bearing on the question of whether or not
17 he was in any kind of illicit agreement is whether or not
18 he performed his duties properly.

19 Now, I don't know of any way that a person can prove
20 he didn't receive a payment or that he didn't enter into
21 a conspiracy. I don't know how one can prove a negative,
22 except by demonstrating that by his behavior he acted in a
23 manner totally consistent with not having entered that
24 conspiracy. If there is any other way that we can demonstrate
25 that to the jury, I would be obliged to anybody if they

1 qtrf 27

2 could point it out. And I think that that goes to the
3 heart of what, if anything, the defense can show.

4 MR. WOHL: May I be heard on that, your Honor?

5 THE COURT: Yes.

6 MR. WOHL: Your Honor, it is the Government's
7 position that the evaluation of how Mr. Roemer did his
8 job from the supervisor's point of view is both irrelevant
9 and would constitute inadmissible opinion evidence.

10 The Government's position is that in order to
11 establish the case of conspiracy to defraud the United
12 States the Government is not required to establish that
13 there was any particular contract or any particular order
14 that Mr. Roemer did not handle in a way that was of the
15 best or to the best advantage of the Exchange.

16 The Government's case would be completely
17 established if the Government proved that he was, in fact,
18 accepting kickbacks even though the defense attempted to
19 argue that his decisions, had he not accepted the kickbacks,
20 would be exactly the same decisions with respect to per-
21 formance of his duties as he would have made without any
22 kickbacks.

23 Consequently, the Government submits that this
24 sort of thing is both irrelevant and, as I said before,
25 would be inadmissible opinion evidence in any event.

1 gtrf 28

2 THE COURT: What is the point about inadmissible
3 opinion evidence?

4 MR. WOHL: Well, your Honor, apparently what Mr.
5 Hoffinger and the defense seek to introduce here is that
6 certain individuals who observed Mr. Roemer performing his
7 duties formed the opinion that he was doing this in a manner
8 that was consistent with all the rules and regulations
9 and formed some kind of an opinion that he wasn't doing
10 anything dishonest, and the Government submits that that
11 would be inadmissible in any event.

12 THE COURT: You were calling for the 201 file.
13 I assume that is a personnel file, isn't it?

14 MR. HOFFINGER: Yes, it is, Judge.

15 THE COURT: Is the object to have a fitness
16 report there signed by Gilhooly in which it will rate him
17 as excellent or very good or something of that sort?

18 MR. HOFFINGER: Yes. It does more than that,
19 Judge. It can do more than that.

20 You see, I am well aware of what the Government
21 would like to show because the Government cannot prove what
22 it would otherwise have loved to have proved.

23 If the Government could show, A, a conspiracy to
24 defraud the United States, and B, actions consistent with
25 that conspiracy, your Honor, I am sure the Government

1 qtrf 29
 2 would bring in that evidence in a minute and it would argue
 3 to that jury that not only did Mr. Roemer enter into the
 4 conspiracy to do something wrong but, in fact, he did
 5 something wrong.

6 Since the Government can't prove that he did
 7 anything wrong because we maintain he never was in the
 8 conspiracy, the Government would like to exclude other
 9 parts of the case which goes to the heart of their case,
 10 and I really, for the life of me, Judge -- I know I am
 11 saying this as an advocate -- I cannot understand how
 12 the Government can argue that point.

13 They may argue it to the jury on assumption
 14 if they wish to, but I have a right to bring it in as
 15 part of my defense.

16 THE COURT: I am not sure that you do. That is
 17 what troubles me.

18 Take our case many years ago but still very
 19 famous here, Judge Matton, who was the Chief Judge of the
 20 Second Circuit and who was tried for accepting bribes, his
 21 defense was that his decisions were absolutely right, that
 22 they were affirmed unanimously by the Supreme Court, they
 23 were joined in by Judge Gus Hand and Judge Learned Hand.
 24 It was ruled that that is no defense.

25 Also a conspiracy to defraud the United States,

qtrf 30

it is not an essential element of the offense that it succeed.

MR. HOFFINGER: I understand that, Judge. But what I am saying is this is not a conspiracy to accept a bribe, this is a conspiracy to turn Mr. Roemer around so that he would do his job in some day other than what he was obliged to do, and I think that we have a right to show that, in fact, he did his job according to the highest standards. They investigated it, your Honor.

You see, it is quite different. This is not a conspiracy to bribe. There is no bribe count in this indictment, nor does the word bribe appear in this indictment. What they are saying is that Mr. Roemer was bought by these people so that they could get him to do for them something other than he should have been doing for the Government.

We say the facts are that he was doing for the Government what he was supposed to in the highest fashion and, in fact, he never had such an agreement.

How can we prove a negative on the agreement? It is impossible to prove a negative on an agreement.

There are a number of ways to attack it. One of the basic ways is to say that what was agreed to be done couldn't have been agreed to be done because the overt behavior brings up an inference that is inconsistent

1 qtrf 31

2 with the agreement.

3 I am not saying that it is a defense in law that
4 if you accept a bribe and change your mind and do everything
5 that you are supposed to do that you can't be prosecuted
6 for conspiring to bribe, but you can certainly introduce
7 it as evidence that the bribe never occurred. And the
8 defense of Judge Matton, I mean, he was putting it in as
9 a legal defense.

10 At this point we are saying that it is at the very
11 least a factual defense, and that is what is critical in
12 this case, to prove factually that Mr. Roemer could not
13 or did not have an agreement to be unfaithful when, in
14 fact, every fact shows he was supremely faithful.

15 That is one part of the defense and it is
16 a critical part, your Honor, and there is no other way that
17 we can think of, no other fact that we can demonstrate against
18 the conspiracy, other than to have an alibi that you weren't
19 there at a particular place. I don't think the law
20 obliges us to have that narrow a defense to conspiracy.

21 THE COURT: I don't think that I will permit a
22 general evaluation by any of his superiors as to how he
23 performed his work.

24 MR. HOFFINGER: That is not what I was asking,
25 by the way, Judge. I wasn't asking for anything general.

1 gtrf 32

2 I wanted him to look at the personnel file, because the
3 personnel file in Mr. Roemer's case is much more specific
4 than that, Judge.

5 I am not talking about general evaluations, I am
6 talking about something specific and it is in the personnel
7 file and it goes to the inference that there was no such a
8 conspiracy or an agreement at all.

9 THE COURT: I know, but --

10 MR. HOFFINGER: And the Government has put this in
11 issue by one and two. They have put into evidence two
12 exhibits in which Mr. Roemer has signed in which he says,
13 "I am going to be a conscientious public servant."

14 Now, they put in this presumably to demonstrate
15 that he knew he was supposed to be a conscientious public
16 servant and, in fact, he wasn't.

17 I think we have the right to show, in fact, he was
18 as one part of our denial of the agreement.

19 THE COURT: I think you have a right to show,
20 if this witness can testify, that Mr. Roemer didn't purchase
21 merchandise from firms represented by Mintz and Penn --
22 I am looking at paragraphs 2 and 3 -- because it said it was
23 part of the conspiracy that Mintz and Penn would offer
24 money to encourage employees to purchase merchandise
25 from firms represented by him.

1 gtrf 33

2 I think you are entitled to show that he didn't
3 make such purchases or didn't make very many.

4 But simply to show by his say that Gilhooly
5 gave him a fitness report of excellence, I can't
6 permit that.

7 Is there anything else in this file that would
8 be admissible through this witness? I mean, are there
9 any statements of this witness?

10 MR. HOFFINGER: No, there were no statements
11 of this witness.

12 THE COURT: These would be statements of --

13 MR. HOFFINGER: Of Gilhooly and Cox.

14 THE COURT: I will have to sustain the Government's
15 objection to that.

16 MR. HOFFINGER: On the ground of hearsay,
17 Judge?

18 THE COURT: Both grounds, too general with
19 reference to the charges in the indictment and hearsay.

20 MR. HOFFINGER: On the question of hearsay,
21 Judge, if I might for just a moment, on the question of hearsay
22 it is my understanding if it is a regular business entry
23 it avoids the hearsay problem.

24 THE COURT: Yes.

25 MR. HOFFINGER: That was my understanding. That

1 qtrf 34

2 is why I was trying to lay a foundation that these things
3 are kept in the regular course of PX business, there is no
4 question about that. I believe it comes in under the shop
5 book rule for that and we don't get into the hearsay
6 question.

7 As far as whether it is general or specific,
8 if and when we offer it in evidence because it surmounted
9 the hearsay question, the question of relevance, Judge,
10 I think might be ruled on if you saw what we were trying
11 to introduce. We are not seeking to introduce every item
12 in the record.

13 THE COURT: Have you seen this file?

14 MR. HOFFINGER: Yes, of course, Judge.

15 THE COURT: What is it specifically?

16 MR. HOFFINGER: Just to give you an idea, Judge,
17 I can read to you -- for example, look at this (handing).

18 I am not talking about arrangements, but specific --

19 THE COURT: You mean this narrative summary?

20 MR. HOFFINGER: Yes.

21 THE COURT: Oh, I don't think I can permit
22 that.

23 We better mark it for identification.

24 MR. HOFFINGER: We can mark it for identification.

25 THE COURT: Yes. Let us mark it for identification.

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You want the material that is under this thing,
"Narrative Summary: Has Unlimited Enthusiasm," et cetera?

MR. HOFFINGER: The critical thing is the lower
cost price, Judge.

THE COURT: "He has done an outstanding job of
developing sources and lower cost prices on radios
for CONUS Exchanges."

All right, we will mark it Defendant's Exhibit
A for identification.

(Defendant's Exhibit A marked for
identification.)

THE COURT: Anything else?

MR. HOFFINGER: I have what is called meritorious
step advancement, dated March 5, 1965 and item No. 3
specifically, which talks about, again, special low prices
developed by Mr. Roemer.

THE COURT: Do you want this marked for
identification?

MR. HOFFINGER: Yes, I do, Judge.

THE COURT: All right. Mark it Defendant's
Exhibit B.

(Defendant's Exhibit B marked for
identification.)

MR. HOFFINGER: And Defendant's Exhibit C I

1 gtrf 36

2 would like to mark the 20th of February 1964 page.

3 (Defendant's Exhibit C marked for
4 identification.)

5 MR. HOFFINGER: Those things, for example, are
6 not generating of good, bad, A,B,C, they are specific
7 entries made in the regular course of business of the
8 PX which are kept in a file that is kept in the regular
9 course of business, and I maintain, your Honor, that they
10 would come in under the shop book rule and I submit, your
11 Honor, that they are relevant to show that Mr. Roemer
12 was doing everything in his power to keep costs down as low
13 as possible, which was what his job was to do.

14 THE COURT: Yes. I will sustain the Government's
15 objection to that.

16 In view of this charge, though, I certainly will
17 permit you to inquire of this witness or any other witness
18 about purchasing merchandise from firms represented by
19 Mintz and Penn.

20 I agree with you that in view of this particular
21 charge you ought to be able to show that he never purchased
22 merchandise from them or he purchased it in normal
23 quantities, whatever it is you want to show about it.

24 I agree with you on that.

1 gtrf 37

2 MR. PERRIN: May we just have one moment, if
3 your Honor please?

4 THE COURT: Yes.

5 (Pause.)

6 MR. HOFFINGER: Your Honor, might we, for the time
7 being when the witness returns, establish at least that
8 the personnel file and what was contained in there were
9 entries made in the regular course of business so we can get
10 the shop book rule out of the way and we will just mark it
11 for identification without --

12 THE COURT: I suppose the Government would concede
13 that.

14 MR. WOHL: Yes, your Honor, the Government will
15 stipulate to that.

16 MR. HOFFINGER: All right, fine.

17 THE COURT: I think the Government would concede
18 that, that these are entries made in the regular course
19 of business.

20 MR. HOFFINGER: Fine. Then the only objection
21 of the Government at this point is relevance.

22 THE COURT: There are some of these statements
23 which are simply narrative statements and are hearsay under
24 any definition.

25 MR. HOFFMAN: Right. Okay.

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1 gtrf 38

2 THE COURT: I think we will have to mark them for
3 identification, which we have done, and I will sustain
4 the Government's objection.

5 MR. HOFFINGER: Okay. Fair enough.

6 THE COURT: All right. Then we will start in at
7 2:00 o'clock.

8 Anything else? Any other problem?

9 All right.

10 (Luncheon recess.)
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1 gtrf pm 39

2 AFTERNOON SESSION

3 2:00 p.m.

4 (In open court, jury present.)

5 THE COURT: Members of the jury, the clerk tells
6 me that one member of the jury raised the question about
7 jurors taking notes.

8 It is a very sensible question, but I must tell
9 you that it relates to an issue as to which judges are
10 very sharply divided. I guess about half the judges permit
11 it and some encourage it, but half prohibit it.

12 Now let me tell you just briefly some of the
13 points that are made.

14 Those who permit jurors to take notes say that,
15 well, the judge takes notes, lawyers take notes,
16 why shouldn't jurors take notes?

17 Well, the judge takes notes because he has to give
18 a charge later. Lawyers take notes because they have to
19 cross examine. Their functions are a little different.

20 Those who discourage jurors taking notes feel that
21 it emphasizes one part of the case to the exclusion of others
22 which might be just as important. It also, it is feared,
23 gives jurors who take notes undue ascendancy or influence
24 in the deliberations of the jury at the end.

25 As I say, the debate has gone on for many, many
years and it hasn't been settled.

qtrf 40

I feel that jurors, if they wish to take notes, should be permitted to do so and I do permit jurors to take notes. I don't encourage it. And I do say if a juror takes notes, he or she should use the notes himself or herself and not show them to other members of the jury.

I haven't perhaps enlightened you very much, but it is about the only way I can answer the question, which, as I say, is a very, very sensible one.

All right, Mr. Hoffinger, you may continue cross examination.

MR. HOFFINGER: May we approach the bench for a moment to clear up one thing before I begin and there will be no further interruptions.

(At the bench.)

MR. HOFFINGER: Your Honor, I am raising this question now in view of our conference before.

I would like to ask this witness, irrespective of what is in the 201 file, whether or not he had any concerning my client's character for integrity and loyalty back at the time, 1961 to 1965 or 1966.

May I go to that? I will ask it, aside from anything that is in the file.

THE COURT: You mean the performance of how he performed his duties at that time?

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1 gtrf 41

2 MR. HOFFINGER: Yes.

3 THE COURT: I don't think I can permit that.

4 You can ask him specifically with reference to
5 the Mintz and Penn operation.

6 MR. HOFFINGER: He won't know. There would be no
7 way he would know.

8 THE COURT: But just a general question --

9 MR. HOFFINGER: Isn't that true?

10 MR. WOHL: Yes.

11 THE COURT: -- how he performed his duties, I
12 couldn't permit it.

13 (In open court.)

14 THE COURT: Members of the jury, I think I will
15 also take occasion to explain. You see us having conferences
16 here out of the hearing of the jury. That is not because
17 there is anything secret, but, as I told you this morning,
18 the jury decides all issues of fact and what counsel and I
19 talk about out of the hearing of the jury relates to
20 questions of law, and the theory is that if we debate questions
21 of law in the presence of the jury it diverts the
22 attention of the jury from the issues of fact which the
23 jury decides over into questions and arguments of law which
24 it is my duty to decide, and that is the reason that we
25 have these discussions outside the hearing of the jury,

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not because there is anything secret about it, but because we think it is better not to divert the jury to arguments of law.

That is the reason for it.

K E N N E T H L. T H O M P S O N, resumed

the stand and testified further as follows:

CROSS EXAMINATION

BY MR. HOFFINGER (Continued):

Q Mr. Thompson, I believe you testified before lunch that Mr. Roemer had discretion not to sign the purchase orders that were coming through from Europe if for any reason he didn't agree, but that this was very seldom done.

A Yes.

Q And I think you said if Mr. Roemer had a question, he would have to take it up with his group, is that right?

A I didn't say he had to, but the buyers usually would, yes.

Q By his group you mean his --

A His group manager.

Q Which would be Mr. --

A Mr. Cox.

Q Or?

A Or in the event he wasn't there, Mr. Gilhooly

or the chief of the purchasing branch.

Q Assuming that Mr. Roemer did have a question about an order coming through from Europe that was initiated by the European buyer, if he had such a question, could he, without obtaining the concurrence of the European buyer, go out and buy something else?

A Technically, yes.

Q Would he, as a general policy matter?

A When I testified before I described three types of orders that would come in. One of those types was called a requisition.

When he received a requisition or when a buyer received a requisition, he would have much broader latitude in accomplishing the procurement against that requisition than he would if it was on a purchase order master.

For example, let's take children's dresses, they might just come in and say, "I want children's dresses to sell between \$3 and \$5. I want 10,000 of them."

An overseas Exchange might come in and tell our buyers to buy that and then the buyer would then go out and buy 10,000 dresses and he might buy that from one manufacturer, from 10, 15 manufacturers, so he would have the discretion in that regard.

Q But were there orders that might come through from Europe specifying a particular record, for example, which would be held only by one particular company?

A Oh, yes.

Q And in that event, what authority would Mr. Roemer have?

A Well, he still had the authority as the contracting officer as final authority, but general practice, if they asked for a particular type of record, that is the one he bought.

Q When you say "they," you mean the European buyer?

A The European buyer, right.

Q I think you also described in your direct examination how the orders had certain spaces for information on them?

A Right.

Q Did those orders that you describe indicate on the order whether there was a manufacturer's sales rep?

A Not that I recall.

Q So that by looking at the order, one could not tell in the States whether it was a contract officer or a group manager or anything? One could not tell by looking at the order what particular sales reps might be representing those particular manufacturers?

1 gtrf45 Thompson-cross

2 A No, not by looking at the order.

3 C Mr. Thompson, how were PX employees like Mr. Roemer
4 paid? Were they paid by Government check or by civilian
5 check or what?

6 A No. As I mentioned in the beginning, the Exchange
7 is a non-appropriated fund Government instrumentality.

8 We buy merchandise, we put a markup on it, we would
9 make profits out of which we would have to pay our expenses.
10 So Mr. Roemer was paid by the Army and Air Force Exchange
11 Service, which was not a non-appropriated fund activity,
12 so as far as the monies were concerned they were not
13 federal funds.

14 THE COURT: No, but I think probably
15 counsel means, was it a check drawn on the Treasury or
16 a check drawn on a commercial bank.

17 THE WITNESS: A check drawn on a commercial bank.

18 Q To put it another way, it wasn't a Government --
19 withdrawn.

20 MR. HOFFINGER: Thank you, Judge.

21 Q Were the employees of the PX like Martin Roemer,
22 did they get Social Security?

23 MR. WOHL: Objection.

24 THE COURT: I will permit it.

25 A Yes.

1 gtrf 46

Thompson-cross

2 Q Do federal employees get Social Security?

3 A Do federal employees get Social Security? I
4 don't know.

5 Q Was Mr. Roemer Civil Service?

6 MR. WOHL: Objection.

7 THE COURT: I will permit it.

8 A No.

9 MR. HOFFINGER: I have no further questions.

10 Thank you, Mr. Thompson.

11 THE COURT: Mr. Wohl?

12 MR. WOHL: No redirect, your Honor.

13 THE COURT: Thank you, Mr. Thompson. You may
14 be excused.

15 (Witness excused.)

16 THE COURT: Next witness.

17 MR. HOFFINGER: The Government calls Robert
18 Bachinger.

19 Your Honor, this witness will require an interpreter.

20 (Interpreter was duly sworn by the Clerk of the
21 court.)

22 R O B E R T B A C H I N G E R, called as a
23 witness by the Government, being first duly sworn,
24 testified as follows:
25

J. Kwatt

1 gt:mg

2 United States of America

3 v.

70 Cr. 130

4 Martin L. Roemer

5
6
7 November 1, 1974
9:30 a.m.

8
9 (Trial resumed.)

10 (In open court, jury present.)

11
12 THE COURT: All right.

13 MR. HOFFINGER: I call Mr. Cox to the stand,
14 please.

15 ...

16 R O B E R T A N D R E W C O X, called
17 as a witness by the defendant, having been first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HOFFINGER:

21 Q Mr. Cox, were you employed by the Post Exchange
22 System in the 1960s?

23 A Yes, sir.

24 Q And when were you first so employed?

25 A In May of 1953.

1 gt:mg 2

Cox-direct

2 Q Did there come a time in 1958 when you were
3 working in the New York office of the PX System?

4 A Yes, sir.

5 Q In what capacity?

6 A Chief of the Hard Lines Branch.

7 Q As Chief of the Hard Lines Branch, was your
8 group or division cut up into sections?

9 A Yes. At that time there were six sections.

10 Q Was one of those sections electronics and phono-
11 graph records?

12 A Yes, among other things.

13 Q What other things did you have? What other
14 sections were there?

15 A There was photography, yard goods and domestic
16 goods, housewares and hardware, toys, sporting goods,
17 luggage.

18 Q From 1961 through 1966, approximately how many
19 people were under your supervision?

20 A Approximately 100.

21 Q Was Martin Roemer one of those people?

22 A Yes, sir.

23 Q And what was his capacity at that time?

24 A His title was a senior buyer. He headed up one
25 of the sections within the branch.

1 gt:mg 3

Cox - direct

2 Q Can you tell us what the functions of a senior
3 buyer was or what his functions were in the 1960s?

4 A He had other buyers under his supervision. It
5 was his responsibility to supervise their activities,
6 and he also was responsible for procurement himself. cer-
7 tain products.

8 Q Did he have authority to sign orders in his
9 group, so to speak?

10 A Yes, sir.

11 Q Was there a system in those days whereby the
12 New York office and Mr. Roemer's group in particular would
13 be receiving orders or requisitions from the European Ex-
14 change?

15 A Yes, sir.

16 Q Can you give us some idea about how the system
17 worked where the European Exchange would be sending
18 through orders to the American Exchange?

19 A Most of the orders received from the European
20 Exchange were purchase orders. There were different ways
21 of buying merchandise and EES used the purchase order
22 system, generally.

23 Q When you say EES, who do you mean?

24 A The European Exchange System.

25 These orders came on a daily basis. We received

1 gt:mg 4

Cox - direct

2 them every day.

3 Q How many would you say you received in a day?

4 A Hundreds, several hundred.

5 Q Was there a man called Joe Johns with whom you
6 were acquainted?

7 A Yes, sir.

8 Q Was Joe Johns in the New York office or part
9 of the New York office in the 1960s?

10 A No, sir.

11 Q During the time that we are talking about, from
12 1961 through 1966, what was the function of Joe Johns?

13 A He was a buyer and a group chief in the Exchange
14 in Europe in the procurement division.

15 Q Would he be authorized to be the person who
16 would be sending through orders that would be received
17 by Mr. Roemer's group, so to speak?

18 A Yes, sir.

19 Q And what form would those orders take with re-
20 spect to merchandise -- well, withdrawn.

21 Can you explain why the European Exchange or
22 Mr. Johns in particular might be sending through an
23 order to the American Exchange, which presumably Mr.
24 Roemer or his group would have to look at? Can you give
25 us some understanding about how that was occurring?

gt:mg 5

Cox - direct

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A The question is not quite clear.

Q In the normal course of business, you told us, I believe, that Mr. Roemer would be receiving, or his group would be receiving orders coming from Europe.

A Yes.

Q Would they be orders coming from Mr. Johns?

A Yes.

Q Can you give us some idea about what an order would be like? Would it be for specific merchandise from a specific manufacturer or would it be an order for, for example, "Get me a thousand television sets" or would it be for a specific television set?

A In nearly all instances it would be a specific manufacturer, a model number, a specific item and a price, a cost price.

Q That would be what would be coming from Europe?

A Yes, sir.

Q In other words, the European order requisition would be for a particular shirt, for example?

A Yes.

Q By a particular manufacturer?

A Yes.

Q Or a particular record?

1 gt:mg 6

Cox-direct

2 A Yes.

3 Q He would buy --

4 A Even to the title.

5 Q I beg your pardon?

6 A Titles were specified, not just the make of
7 the record, but the title.

8 Q Then would Mr. Roemer then have to pass on the
9 order coming from Mr. Johns?

10 A The orders would first come to my office every
11 morning. If I had time, I looked through the orders.
12 If I didn't have time, my secretary broke them down and
13 sent them out to the secretaries where the senior buyer
14 looked the orders through -- this was part of his job ---
15 and then passed the orders out to the other buyers in
16 his section.

17 He would keep some for himself or if he saw
18 something that was questionable or he wanted to look
19 through further, he would keep those on his own desk and
20 pass the others out to the other buyers who would process
21 them and put them through.

22 Q In the normal course of procedure, could a
23 senior buyer refuse to pass through the order coming from
24 Mr. Johns?

25 A No, not-- not during the period that we are

1 gt:mg7 Cox - direct

2 talking about.

3	Q	Right.
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4 A He could question the order, he had the right to
5 question it and hold it up and investigate it, but he
6 did not have the right to not sign the order.

7 Q If he were holding it up or investigating it,
8 in the normal course of business, would he be bringing
9 it to someone else's attention?

10 A He would bring it to me.

11 Q When you say "he" you mean Mr. Roemer in this
12 instance?

13 A Mr. Roemer would bring it to me.

14 Q In other words, in the normal course of the
15 procedure, Mr. Roemer, if he had a question about an order
16 that Joe Johns was putting through, he would come to you
17 with it?

18 A Yes.

19 Q Do you recall any specific occasions on which
20 Mr. Roemer did just that?

21	A	Yes.
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22 Q Can you tell us the first occasion that you re-
23 call that happening, in what context, or in connection
24 with what order?

25 - The first incident that I recall was a purchase

gt:mg 8

Cox - direct

order that came through, made out to an American firm for Japanese radios, Toshiba by brand, for a very large quantity, 10,000, I think, at a price which Mr. Roemer felt was high for the product, and the order was made out to a firm that he was not familiar with, so he held this order aside, brought it to my attention, and we investigated it, as he or any other buyer would do under similar circumstances.

Q Do you recall when this occurred?

A Well, it was in the early 1960s. I'm not sure of the year.

Q When you say it was held up and you questioned it, did you and Mr. Roemer question anyone in particular about it?

A Yes. The first thing I think that Mr. Roemer did was find out who the vendor was that the order was made out to. The name, I think, was Transworld or Transworld Lista, or some such name. He investigated the firm.

He found out who the firm belonged to, he --

MR. WOHL: I am going to object to this unless we establish some foundation as to what the witness is saying, whether this is a conversation or what.

THE COURT: Is this what Mr. Roemer told you he did, Mr. Cox?

1 gt:mg 9

Cox-direct

2 THE WITNESS: I know for a fact that he did
3 it.

4 THE COURT: All right.

5 Q And after that investigation, did someone from
6 the firm or some representative come to see either you
7 or Mr. Roemer?

8 A Yes. Two men came to see me in my office,
9 Mr. Morty Penn and a man with him who he said was his
10 attorney.

11 Q You mean who Morty Penn said was his attorney?

12 A Morty Penn said was his attorney.

13 Q Who was in the office at that time?

14 A Mr. Roemer and myself and that was all.

15 Q And can you tell us what transpired, to the best
16 of your recollection?

17 A Mr. Penn was inquiring about why the order had
18 not been placed.

19 We told him that we had requested a sample.
20 We wanted to evaluate the merchandise because Mr. Roemer
21 felt that a similar radio could be bought for a lower
22 price. We had not yet received the samples and we would
23 not release the order until we had evaluated the mer-
24 chandise.

25 Q Did you or did Mr. Roemer, in your presence, ever

1 gt:mg 10

Cox-direct

2 indicate or did Mr. Penn ever indicate or did you ever
3 talk about a legal problem in connection with this, to
4 your recollection?

5 A No, sir, nothing legal came up or nothing about
6 a legal question came up.

7 Q Do you recall whether or not Mr. Roemer or you
8 ever signed that order?

9 A To the best of my knowledge, we did not sign
10 it.

11 Q If you did not sign it, are you saying someone
12 above you could have signed the order?

13 A Yes, sir, any one of three people who were my
14 supervisors.

15 Q Would you name the three people?

16 A My immediate supervisor was Mr. John Gilhooly,
17 his supervisor was Mr. Robert Cotton and his supervisor
18 was Colonel Gilbert Rahn, who was the Director of the
19 Division.

20 Q Do you recall any other occasion on which Mr.
21 Roemer, in the normal course of his duties, brought to
22 your attention any other requisition that Mr. Johns was
23 putting through by purchase order?

24 A Yes. In early 1965 a purchase order came through
25 made out to a vendor Scott Records, I believe it was, for

1 gt:mg 11 Cox-direct
2 a huge quantity of records, 100,000, I think, at prices
3 of \$1.20 for monaural records and \$1.40 for stereo records.
4 Q When you say an order came through--
5 A A purchase order came through from Europe.
6 Q From Mr. Joe Johns?
7 A Yes.
8 Q And it specified where the records were to be
9 bought?
10 A Yes.
11 Q And it specified a price?
12 A Yes.
13 Q And the price was \$1.20 for monaural?
14 A Yes.
15 Q And \$1.40 for long-playing?
16 A Stereo.
17 Q I beg your pardon. Stereo.
18 Anyway, what happened?
19 A Mr. Roemer was in the market every day, it was
20 part of his job, and he had learned that the Scott Record
21 Company had bought three or four hundred thousand records,
22 I believe, from CBS at a much lower price, \$.75, I be-
23 lieve, for monaural and \$.85 for stereo, so Mr. Roemer
24 went to Scott and negotiated a price--
25 MR. WOHL: I object.

1 gt:mg 12

Cox-direct

2 THE COURT: Did you go with him?

3 THE WITNESS: No, sir, I did not.

4 THE COURT: Is this what he told you?

5 THE WITNESS: I know that he went, sir.

6 THE COURT: Well --

7 THE WITNESS: I know he went to Scott.

8 THE COURT: You know that because he came back
9 and told you?

10 THE WITNESS: He came back and told me and came
11 back with a lower price, so he had to go to Scott.

12 Q Well, you saw the original price, didn't you?

13 A Yes.

14 Q And the original price that came through from
15 Joe Johns was how much?

16 A \$1.20 and \$1 40.

17 Q Right. And did Mr. Roemer tell you he was
18 going to go somewhere?

19 A Yes. He told me he was going to Scott and he had
20 to go to Scott, otherwise he could not have obtained the
21 lower price. There is no other way to get it.

22 Q Right.

23 Then he returned, and what was the lower price
24 that he had obtained?

25 A \$1.00 for both monaural and stereo, which we

gt:mg 13

Cox-direct

thought was a fair price, because we couldn't buy all they had, we only had a requirement for 100,000.

Q You mean -- I see. In other words, what you are saying is that Scott had purchased 400,000?

A Yes.

Q And gotten a better price on it?

A Yes.

MR. WOHL: Objection to leading.

MR. HOFFINGER: I am not -- I am just -- I didn't mean to do it.

THE COURT: All right. Let's go on.

Q After he obtained this price of \$1 per record instead of \$1.20 to \$1.40 for the 100,000 records, did he do anything else, to your knowledge?

A Yes. It was part of his responsibility and every buyer's responsibility to keep the overseas exchanges informed on market conditions in the states, prices and products and special offers, so he sent a cable out, which was the usual way of communicating with the overseas exchanges, informing them that he had -- that these records were available and that he had negotiated a lower price than they would probably be offered, which, of course, would have resulted in a huge savings to the exchange.

1 gt:mg 14

Cox-direct

2 Q In other words, he was alerting them about the
3 300,000 records still remaining with Scott?

4 A Yes.

5 MR. WOHL: I object to all this leading again.

6 THE COURT: Of course, the point is well-taken,
7 but there is no great harm done.

8 All right, let's go on.

9 MR. HOFFINGER: I don't mean to.

10 Q Can you recall any other specific instance in
11 which Mr. Roemer held up or questioned Mr. Johns' requisitions or purchase orders?
12

13 A Yes, there were others.

14 I recall Mr. Roemer reporting to me that he had
15 received a telephone call from the Westinghouse Electric
16 Company saying that they had been approached by Morty
17 Penn asking for the sale of their line to the exchanges
18 in Europe.

19 I later verified this and found it to be a fact.

20 He promised the exchange-- he promised Westinghouse
21 that if they gave him the line, he would get them an order
22 for a thousand television sets.

23 Q "He" being who?

24 A Morty Penn.

25 Q Go ahead.

1 gt:mg 15

Cox - direct

2 A We objected to it. Westinghouse's comment was:
3 Well, they weren't getting any business anyway. They had
4 nothing to lose and they would take Porty Penn on, and
5 they did.

6 Later on, we received either one or two purchase
7 orders totaling one thousand TV sets.

8 Q From?

9 A From Europe, from the exchange in Europe.

10 Q From Joe Johns?

11 A From Joe Johns.

12 Q And what, if anything, did you or Mr. Roemer do?

13 A Mr. Roemer's product knowledge was always out-
14 standing, in my opinion--

15 MR. WOHL: I will object to that and move to
16 strike it.

17 THE COURT: Yes.

18 Mr. Cox, under our rules, you can't express
19 opinions or conclusions. You can say what Mr. Roemer told
20 you, what you did, what you saw. You understand?

21 I will sustain the objection and strike out the
22 remark.

23 Do you remember what the question was?

24 What did you do about this order for a thousand
25 Westinghouse television sets?

1 gt:mg 16

Cox-direct

2 Q What did you do?

3 A Mr. Roemer and I informed one of my supervisors,
4 Mr. Cotton, of this purchase order and our reluctance
5 to place it because of the consumer acceptance of the
6 product at that time.

7 Mr. Cotton instructed us to make a study of the
8 best-selling television sets in the industry.

9 Marty Roemer went to the Electronic Manufacturers
10 Institute, consulted with trade magazines, and he found
11 out that Westinghouse was a poor ten on the list, so we
12 objected to placing the purchase order and we didn't sign
13 it and we didn't place it at that time.

14 Q This Westinghouse occurrence, can you give us
15 an approximate time in terms-- in connection with Scott,
16 would you say it was before Scott or after the Scott
17 thing?

18 What is your approximate timing on that?

19 A I think it was before Scott. It was in the
20 early 1960s. It would be 1962, 1963.

21 Q Did there come a time when Mr. Roemer went to
22 Europe?

23 A Yes, sir.

24 Q Can you tell us approximately when or about when
25 that was?

1 gt:mg 17

Cox - direct

2 A Well, it was early 1964, I think it was in March,
3 I believe, or April, the early part of the year.

4 Q Incidentally, did he go to Goose Bay, Labrador,
5 as well, on that occasion?

6 A No, sir.

7 MR. WOHL: I will object to that.

8 THE COURT: Yes.

9 Did you go with him, Mr. Cox?

10 THE WITNESS: No, sir.

11 THE COURT: I don't see how Mr. Cox would know
12 whether he went there or not.

13 THE WITNESS: I read his report, your Honor.

14 MR. WOHL: I move to strike that and that the
15 jury be told to disregard it.

16 I would ask the Court to instruct the witness
17 when I stand up to wait until we resolve these legal
18 questions.

19 THE COURT: All right, let's go on.

20 Q Was there a time that you were receiving communi-
21 cations from him when he was in Goose Bay, Labrador? Yes
22 or no, without telling us when.

23 MR. WOHL: I will object.

24 THE COURT: Did you get any cables, post cards or
25 anything from him in Goose Bay?

gt:mg 18

Cox- direct

THE WITNESS: As I recall, yes. I received a letter from him.

I would like to point out --

THE COURT: From Goose Bay?

THE WITNESS: From Goose Bay, from Mr. Roemer.

I would like to point out that it was my responsibility to sign his travel orders when he left. It was his responsibility to file a report with me of his trip when he came back so there is no question in my mind that he went to Goose Bay.

Q When was that?

A Well, it was before he went to Europe.

Q How much before?

A Oh, several months before, probably.

Q On this occasion that he went to Europe in March of 1964, was it in connection or in any way connected with any problems with Joe Johns that Mr. Roemer was having?

A Yes. Joe Johns complained about the records that he was receiving from the states. He complained primarily about the delivery and the condition of the delivery, the records were broken and received in bad shape, they were late in arriving.

Q While Mr. Roemer was in Europe, did you and he communicate in any connection?

1 gt:mt 19

Cox-direct

2 A Yes, I wrote to him twice, I believe, and he
3 replied to these letters.

4 Q Did you discuss with him anything concerning
5 any problems that you and he were having with Joe Johns
6 or anyone else?

7 A Yes, I did.

8 Q About whom in particular?

9 A About Morty Penn in particular.

10 Q Aid you and Mr. Roemer have problems about Morty
11 Penn? Yes or no?

12 A Yes.

13 Q And did you make your problems known to anyone?

14 A Yes, many times.

15 Q To your superiors?

16 A Yes, sir.

17 Q Which of the superiors did you make the prob-
18 lems known to?

19 A To Mr. Gilhooly, Mr. Cotton and Colonel Rahn.

20 Q In connection with Colonel Rahn, did you, either
21 alone or with Mr. Roemer, go to see Colonel Rahn?

22 A With Mr. Roemer I went to see him on more than
23 one occasion.

24 Q And what did you or Mr. Roemer together say to
25 Colonel Rahn concerning those problems?

gt:mg 20

Cox-direct

A Mr. Roemer and I both told Colonel Rahn and my other supervisors that because of the incidents that happened, we mistrusted Morty Penn and we felt that there was something going on between Morty Penn and Joe Johns, they had something going.

Q What did you mean by that?

A A kickback, a splitting of commissions.

THE COURT: And is that what you told your superiors?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. WOHL: I move to strike that unless it is established that Mr. Roemer was present on that occasion.

THE COURT: Was Mr. Roemer there?

THE WITNESS: Always. Mr. Roemer was always present or any other buyer that was concerned because they were more familiar with the incident than I was, so I always--

THE COURT: No. On the occasions when you say that it was told to your superiors that you thought that Jones was getting a kickback from Penn, was Mr. Roemer with you?

THE WITNESS: Yes, sir.

THE COURT: All right. Let's go on.

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gt:mg 21 Cox - direct

THE WITNESS: Yes, sir.

Q Who had brought Mr. Penn's name to your attention for the first time?

A Marty Roemer.

Q And in connection with Scott Records, did Mr. Roemer indicate to you that there might be a connection between Scott Records and Mr. Penn?

A Yes. When he went to Scott to investigate this order, he found out that Morty Penn represented them.

Q Did he bring that information back to you?

A Yes, sir.

Q Did he indicate some concern to you on that occasion?

A Yes.

Q After you reported this to Colonel Rahn - Colonel Rahn was the top of the hierarchy, was he not?

A He was the Division Director of the Procurement Division.

Q Did he tell you he would pass on this information to Europe?

A Yes, sir.

Q And as far as you know, did he pass on this information to Europe?

A Yes, sir, he told me he did.

1 gt:mg22

Cox - direct

2 Q In addition to Colonel Rahn, did you ever talk
3 to any other superior about this? Yes or no?

4 A Yes.

5 MR.WOHL: Objection. On all of this, I don't
6 think it is admissible unless Mr. Roemer was present.

7 MR.HOFFINGER: Let me lay the foundation.

8 Q Did you go alone or did you go with Mr. Roemer?

9 A Always with Mr. Roemer or any other buyer.

10 Q Why did you go with Mr. Roemer?

11 MR. WOHL: Objection. It calls for the opera-
12 tion of the witness' mind.

13 THE COURT: I will permit it. That is a very
14 technical objection.

15 Was there reason why you took Mr. Roemer with
16 you?

17 THE WITNESS: Yes, sir. And this happened
18 with other buyers, too, your Honor. I always took the
19 buyers along with me because they were more conversant
20 of the incident than I was --

21 THE COURT: They knew the details?

22 THE WITNESS: They knew more details than I did
23 and I wanted them to be present to pass them on.

24 THE COURT: All right. I understand. Go
25 ahead.

gt:mg 23

Cox - direct

Q Aside from Colonel Rahn that you told us about, did you go to any of your other superiors?

A Yes, my immediate superior, John Gilhooly.

MR. WOHL: Objection.

THE COURT: To what?

MR. WOHL: Why can't counsel ask if Mr. Roemer was there each time?

MR. HOFFINGER: I thought he said this. I will say it again.

THE COURT: Did you ever make any complaint involving Mr. Roemer's matters to your superiors or did you ever bring any information concerning any of Mr. Roemer's matters to the attention of your superiors when he was not there?

THE WITNESS: Only one incident that I recall, and that was while he was in Europe.

THE COURT: All right.

Q Okay. Let's not talk about that one.

THE COURT: Except for that, he was with you at all times?

THE WITNESS: Yes, sir.

Q Did you and he go to Mr. Gilhooly?

A Yes.

Q Did you and he go to Mr. Cotton?

1 gt:mg 24

Cox-direct

2 A Yes, sir.

3 Q And did you and he go to Colonel Rahn?

4 THE COURT: We have been over that.

5 Now let's go on to something else.

6 Q Did you go anywhere else with him that you can
7 recall in connection with this, to any other superior that
8 you can recall?

9 A No, sir.

10 Q After Mr. Roemer returned from Europe, do you
11 recall approximately when that was?

12 A He was there about three weeks.

13 Q So then we are talking about April or May of
14 1964?

15 A April or May of 1964.

16 Q When he returned from Europe, after that, were
17 there any other orders that Mr. Johns sent through that
18 Mr. Roemer questioned?

19 A Yes. There was an order that came through from
20 the exchange in Europe for a large quantity of children's
21 phonographs.

22 Q And that was from Joe Johns?

23 A That was from Joe Johns.

24 Q And did Mr. Roemer bring that order to your
25 attention?

1 gt:mg 25 Cox - direct

2 A Immediately when he received it.

3 Q And what did he tell you?

4 A The order was made out to a concern that he
5 did not know. He did know that this concern was not the
6 manufacturer of the records.

7 THE COURT: This is what he told you, I take it?

8 THE WITNESS: He investigated, sir. He went to
9 the company and found out who they were -

10 THE COURT: Whatever he did, you know about it
11 because of what he told you, isn't that the fact?

12 THE WITNESS: Yes, sir, but I also knew what he
13 was doing most of the time.

14 THE COURT: Go ahead.

15 Q Did the name of Morty Penn come up in that connec-
16 tion at all?

17 A Yes, because Morty Penn represented this company.

18 Q How did you know that?

19 A Because Marty Roemer found this out from the
20 company and came back and told me.

21 Q Were most of the companies represented by manu-
22 facturer's reps?

23 A Probably more than 50%, yes.

24 Q And if you wanted to buy from that company, you
25 would either deal with the company or with the manufacturer's

720
1 gt:mg 26

Cox- direct

2 rep, is that it?

3 A Yes.

4 In the case of the New York office, we generally
5 dealt with the manufacturer.

6 Q And very often the manufacturer would tell you
7 who the rep was?

8 A Yes. We always-- generally always knew.

9 Q Incidentally, the purchase orders or requisitions coming from Joe Johns asking for specific merchandise
10 from a specific manufacturer, did those orders contain
11 the name of the manufacturer's rep?
12

13 A No, sir.

14 Q In any event, after Mr. Roemer indicated to you
15 that this was one of Morty Penn's clients, what happened
16 then, if you recall?

17 A We discussed it, Marty Roemer and I discussed
18 it and decided that he should go out to the various manufacturers of these children's records that were called
19 for on this purchase order and buy them directly from the
20 manufacturers at a considerably lower price.
21

22 This is what we did. We placed the orders with
23 the manufacturers, the records were shipped to the exchange in Europe from the manufacturers, not from the
24 concern that was called for on the purchase order, at a
25

gt:mg 27

6ox-direct

considerable savings.

Q Did you ever meet a Mr. Givens, an Assistant
U.S. Attorney?

A Yes, sir.

MR. WOHL: I will object.

THE COURT: Yes. Sustained.

Strike it out. It is irrelevant whether you
met him or not.

Q In connection with your functions as a supervisor
of Mr. Roemer, was it normal and ordinary for you to pass
on his qualifications? Yes or no?

A Would you repeat the question, sir? I didn't
hear it.

Q Let me put it to you this way.

Was it part of your normal function to rate the
senior buyers or comment in writing about the senior
buyers under your supervision?

A Yes. This was called a personal evaluation.

MR. WOHL: Objection.

THE COURT: Yes. Sustained.

We have gone beyond the relevant scope of ex-
amination.

MR. WOHL: Your Honor, I really don't think it
would be unfair to ask this witness when he sees me

1 cgt:mg 28

Cox-direct

2 stand up to wait rather than speeding his answer up.

3 THE WITNESS: I am very sorry. It is not in-
4 tentional.

5 MR. HOFFINGER: I beg your pardon.

6 THE COURT: All right.

7 MR. HOFFINGER: I object to that comment, your
8 Honor.

9 THE COURT: Well, let's go on.

10 The point is that we have now dealt with spe-
11 cific matters involving Mr. Roemer.

12 Now to ask him if it was his job to rate his
13 performance and was it good, bad or indifferent, is en-
14 tirely irrelevant to any charge here.

15 Q When did you retire or resign from the PX System?

16 A I retired on February 1, 1969.

17 Q And had you worked since then or are you com-
18 pletely retired?

19 A Off and on I have worked. I first did some work
20 with a management consultant firm in Dallas. I later
21 worked a year for the Sunbeam Corporation as a consultant
22 between Sunbeam and the Exchange, and at the present time
23 I am working as a consultant in Dallas for the Titan
24 United Corporation.

25 Q How long have you been working for that corporation?

1 gt:mg 29

Cox-direct

2 A Since the first of June.

3 Q Since June 1 of 1964?

4 A Yes.

5 Q Have you been in a hospital in the interim?

6 A No. Before that, but not since then.

7 Q Is Mr. Roemer one of the principals of that firm?

8 A Yes, he is.

9 Q What are your duties in connection with that
10 firm?

11 MR.WOHL: I will object to that.

12 MR. HOFFINGER: All right.

13 THE COURT: Yes.

14 MR. HOFFINGER: I have no further questions.

15 THE COURT: All right.

16 (Pause.)

17 MR.HOFFINGER: Your Honor, there is one question
18 that I believe I omitted.

19 THE COURT: All right.

20 BY MR. HOFFINGER:

21 Q Can you tell us what Mr. Roemer's reputation
22 for integrity was in the period that we are concerned
23 about in the 1960s?

24 A Outstanding.

25 MR.HOFFINGER: I have no further questions.

1 gt:mg 30

Cox - cross

2 CROSS-EXAMINATION

3 BY MR. WOHL:

4 Q Do you recall when it was, Mr. Cox, that you met
5 Mr. Penn for the first time?

6 A Sir, I couldn't hear the question. I'm sorry.

7 Q I'm sorry.

8 Do you recall when it was that you met Mr. Penn
9 for the first time?

10 A Yes. It was in the early 1960s, as I mentioned
11 a little while ago, regarding the Toshiba purchase order
12 that came through.

13 I am not sure of the year. Early 1960s, maybe
14 1962.

15 Q In other words, you did not know Mr. Penn prior
16 to the Toshiba matter?

17 A No, sir. No, sir.

18 Q Was it Mr. Roemer-- withdrawn.

19 Who was it that brought this Toshiba matter to
20 your attention?

21 A Marty Roemer.

22 Q What did he tell you about the Toshiba matter?

23 A He told me that-- and showed me a purchase order
24 that he had received from Europe for a quantity, a large
25 quantity, 10,000, I think, of Toshiba radios, at a price

1 gt:mg 31

Cox-cross

2 which he thought was higher than should be paid, and he
3 investigated the firm that the order was made out to and
4 found out that it was either owned by Morty Penn or rep-
5 resented by Morty Penn.

6 Q Did he tell you anything about Morty Penn at that
7 time?

8 A I don't think he liked Morty Penn, I don't think
9 he trusted him as a result of this incident.

10 THE COURT: Is that what he told you?

11 THE WITNESS: Yes, he did tell me that-- it may
12 not have been at that particular time, but I do know he
13 told me he did not trust Morty Penn.

14 Q Do you recall approximately when it was he told
15 you that he did not trust Morty Penn?

16 A No, sir, I don't.

17 Q Are you saying, though, that you do recall it
18 was somewhere around the time of this Toshiba radio
19 transaction?

20 A Yes, and later. And I had reasons to begin to
21 mistrust him--

22 THE COURT: Wait. Don't tell us about your
23 reasons. Just listen to the question and answer the ques-
24 tion; no more, no less.

25 Go ahead.

1 gt:mg 32

Cox - cross

2 Q Did Mr. Roemer ever tell you the basis or what
3 his reasons were as to why he didn't trust Morty Penn?

4 A Yes. Because he felt that Morty Penn and Joe
5 Johns were probably partners and they had something going
6 between them and probably split commissions or kickbacks.
7 These were his suspicions.

8 Q When did he tell you, that is, when did Mr.
9 Roemer tell you that he had suspicions of that sort?

10 A I can't remember the exact time. It was after --
11 it was during and after these purchase orders that I have
12 just spoken about.

13 Q During and after the Toshiba arrangement?

14 A Yes.

15 Q Well now, did you ask Mr. Roemer what his basis
16 was for making that charge, that Johns and Penn were en-
17 gaged in paying kickbacks?

18 A Yes. Because the high cost of the merchandise,
19 higher than the market value of the merchandise.

20 THE COURT: You mean you asked Mr. Roemer why
21 he had these suspicions, and he told you the reason was
22 the high cost of the merchandise?

23 THE WITNESS: One of the reasons, yes, and the
24 fact that the Toshiba radios were a discontinued model,
25 and that these radios or comparable radios could be bought

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gt:mg 33 Cox - cross
at a cheaper price, a lower price.

Q That is all that Mr. Roemer told you, is that correct?

A That is some of the things he told me. That is not all he told me, probably.

Q Can you recall anything else that he told you was the basis for his belief that Mr. Penn was paying kickbacks?

A Yes. He felt and told me that he felt something had to be going on between Joe Johns and Morty Penn because of the merchandise coming in at these higher prices which meant that the exchange was --

THE COURT: No.

THE WITNESS: Excuse me.

Q You do not recall, Mr. Cox, any discussion on this Toshiba radio transaction about the point of origin of the radios or the duties on the radios, is that right?

A The duties?

Q Yes.

A No, sir.

Q Was there any discussion along that line at all?

A No, sir. The radios were made in Japan and they were in the United States and were being sold by an American firm, but we did not discuss duties.

1 gt:mg 34

Cox-cross

2 Q And the fact that they were being sold by an
3 American firm with the duties already paid would be, in
4 your mind, a basis for allowing the exchange to purchase
5 these goods without any problems because of duties or
6 anything, is that correct?

7 A I'm not sure of the answer to that. That's a
8 legal question. I'm not sure of it.

9 Q I am just asking you what your belief was at the
10 time that you were working for the exchange.

11 A There was a policy regarding buying imported
12 merchandise in the United States, but I'm not sure of
13 what the law was, whether the duty had been paid or
14 whether it had not been paid.

15 I'm not sure.

16 Q Were these questions that would arise from time
17 to time in connection with your business at the exchange?

18 A Yes, sir. We had a general counsel that they were
19 referred to.

20 Q And during this period of time, when you were
21 at the New York Headquarters and Mr. Roemer was underneath
22 you, is it correct that in the ordinary course, if Mr.
23 Roemer had a problem, he would come to you?

24 A Yes.

25 Q And is it correct that there was a Mr. Cotton

1 gt:mg 35

Cox - cross

2 above you at that point?

3 A Mr. Cotton was -- Mr. Gilhooly was my immediate
4 supervisor, Mr. Cotton was his supervisor.

5 Q Would it be correct to say if there was a ques-
6 tion that you could not resolve, you and Mr. Roemer between
7 you, that it would, in the ordinary course, go up to Mr.
8 Gilhooly and possibly on to Mr. Cotton?

9 A Yes, sir.

10 Q At the time that Mr. Roemer came to you and told
11 you about Morty Penn, did he tell you what kind of
12 business Morty Penn was involved in?

13 A Yes.

14 Q What did he tell you on that score?

15 A He told me he was a military sales representa-
16 tive.

17 Q Did he tell you whether Mr. Penn had a company
18 or not?

19 A Yes, I think so, and I think it was called ISE
20 or ISC or some such a name.

21 He had several companies, as a matter of fact,
22 I believe it later tuned out.

23 Q But did Mr. Roemer tell you this?

24 A Yes.

25 Q Would it be correct to say -- I will withdraw that.

1 gt:mg 36

Cox-cross

2 How many conversations did you yourself have
3 with Mr. Penn?

4 A One.

5 Q And was that in connection with the Toshiba
6 radio deal?

7 A Yes, yes.

8 Q And subsequent to that time, then, all the in-
9 formation that you were gathering about Mr. Penn was in-
10 formation that was being relayed to you by Mr. Roemer,
11 is that right?

12 A Yes, sir, and by other buyers, also, who came
13 in contact with Morty Penn. But he seemed to have more
14 lines in Mr. Roemer's section than any other.

15 Q And that section related to sales of electronic
16 goods, is that correct?

17 A Electronics, sporting goods, luggage, phonograph
18 records.

19 Q During this period of time, when you were in
20 the New York Headquarters, was Mr. Roemer a contracting
21 officer?

22 A Contracting officer, a buyer, are one and the
23 same thing.

24 Q Is it correct to say that the buyers out at the
25 exchange facilities in Europe did not have authority to

gt:mg 37

Cox-cross

make a final commitment of military exchange funds to buy merchandise?

A No, sir.

Q That is not a correct statement?

A No, sir.

Q What is the correct statement?

A At that time, the period we are talking about, the exchange in Europe had their own op to buy, they had a perfect right to buy whatever they wanted. They could write an order to a specific manufacturer with a specific item at a specific price and if our buyers felt that this was correct, the price was correct, and the item was current, we placed the order.

Q When you say "we," do you mean the New York buyers?

A The New York buyers.

Q Did there come a time when that system changed?

A Not during the period that we are talking about.

Q What period do you have in mind there?

A Well, perhaps after I retired.

Q But certainly from 1962 through 1966 your testimony is that the European buyers always could just buy on their own and sign as contracting officers?

A Signed as the buyer in Europe and the order had

1 eting 38

Cox-cross

2 to be approved by the buyer in the New York office.

3 Q They couldn't send the order directly to the
4 manufacturer, could they?

5 A No, sir.

6 Q And when the order would come to the New York
7 office for approval, that was the time when it was re-
8 viewed by Mr. Roemer or some other buyer there, is that
9 right?

10 A Yes, sir.

11 Mr. Wohl, at that time-- may I just make a com-
12 ment?

13 THE COURT: No. Wait for a question, please.

14 Q Were there any other occasions besides the spe-
15 cific transactions that you testified about concerning
16 Mr. Roemer's reports about Mr. Penn when Mr. Roemer did
17 report about Mr. Penn?

18 A We have mentioned Toshiba radios, Scott records,
19 Westinghouse Television sets, children's records.

20 There may have been others that I don't recall
21 now.

22 Q Were these the only occasions when Mr. Roemer
23 had occasion to talk to you about Mr. Penn or were there
24 others but you just can't recall the specifics on them?

25 A Mr. Roemer kept me very well informed on everything

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gt:mg 39 Cox-cross

that went on in his shop and he kept me informed about Mr. Penn-- not only about Mr. Penn, but other military representatives.

Q Can you tell us how frequently he informed you concerning Mr. Penn?

A Of course not. He came to my office so many times that he became a nuisance almost, but I never failed to stop and listen to hear what he had to say, so he was in my office often, did an outstanding job of keeping me informed of what was going on, as did most of the other buyers.

THE COURT: Wait. Wait. Wait.
He was in your office frequently. All right.
Next question.

Q I believe my question, Mr. Cox, was: Can you give us any information on how frequently Mr. Roemer made reports to you concerning Mr. Penn?

A No, sir. It's been too long ago. I couldn't be expected to remember that, I don't think.

Q Would you describe it as frequently or rarely?

A If I have a choice of the two, I would say frequently.

Q And was it the general gist of Mr. Roemer's comments that Mr. Penn appeared to be paying buyers in the

1 gting 40

Cox-cross

2 exchange system?

3 A In the European Exchange System.

4 Q But then that was the general gist of his com-
5 ments, is that right?

6 A Yes.

7 Q On this Scott record transaction, have you
8 recently reviewed any records on that transaction to re-
9 fresh your recollection as to exactly what time it oc-
10 curred and exactly how many records were involved?

11 A Yes, yes, recently.

12 Q Do you have the record with you?

13 A No.

14 I didn't investigate -- I refreshed my memory.
15 I don't have any records.

16 Q What did you look at to refresh your memory?

17 A Some notes that I made four years ago in Mr.
18 Hoffinger's office.

19 Q Did you have any documents at that time?

20 A I didn't have, no.

21 Q At that time did you look at any documents?

22 A I believe so, yes.

23 Q What type of documents did you look at?

24 A Could have been correspondence, I'm not sure.
25 But I remember the incident distinctly. There is no doubt

1 gt:mg 41 Cox - cross

2 in my mind.

3 Q Did you look at any documents to refresh your
4 recollection concerning the Westinghouse television mat-
5 ter?

6 A No, sir. This was such an unusual situation--

7 THE COURT: The answer is no?

8 THE WITNESS: No.

9 THE COURT: All right.

10 Next question.

11 Q What did Mr. Roemer tell you about Mr. Penn's
12 activities in connection with the Westinghouse transac-
13 tion?

14 A He told me, and I later verified it, that Mr.
15 Penn went to the Westinghouse Electric Company, asked
16 to be their representative in Europe to sell their prod-
17 ucts in Europe.

18 Westinghouse first called Marty Roemer and gave
19 him this information. I later verified it with a Mr.
20 Blevens from the Westinghouse company, and advised against
21 it.

22 Q Did you have any further conversations concerning
23 the Westinghouse transaction?

24 A Many.

25 Q How many conversations, just approximately?

1 eting 42

Cox-cross

2 I am not trying to pin you down, but approxi-
3 mately --

4 A With whom?

5 Q How many conversations with Mr. Roemer did you
6 have on the Westinghouse transaction?

7 A I would say dozens, probably.

8 Q Can you recall, not each specific conversation,
9 but can you recall in substance what he said and what
10 you said in those conversations on the question of Mr. Penn?

11 A No, sir, except I told you we advised Westinghouse
12 against employing Mr. Penn as their representative. We
13 discussed that. We discussed it with my superiors.

14 Q I am sorry, I didn't mean to stop you. Go ahead.

15 A This is so long ago I can't remember little spe-
16 cific conversations, Mr. Wohl, that we might have had or
17 how many we might have had or on what day they occurred.

18 I can't remember them.

19 Q Can you just recall the gist of what Mr. Roemer
20 was telling you his thoughts were concerning the Westinghouse
21 transaction?

22 A Yes. That, first of all, after the study that
23 was made at the direction of Mr. Cotton, we then knew
24 that Westinghouse was a poor 10 in the top ten selling TV
25 sets in the United States and we advised Europe not to buy

1 gt:mg r 43

Cox - cross

2 them.

3 By "we" I mean Mr. Roemer and myself.

4 Q Did Mr. Roemer tell you that Mr. Penn was involved
5 in the Westinghouse transaction?

6 A Mr. Roemer told me this and Mr. Belevens from
7 Westinghouse told me this.

8 Q Did Mr. Roemer tell you anything else about
9 Mr. Penn's involvement in the Westinghouse transaction?

10 A I don't know what other involvement there would
11 be, except that he was their representative and did sell
12 the exchange in Europe a thousand TV sets.

13 Q Mr. Roemer told you, also, that Mr. Penn had
14 been the one who sold the TV sets to the exchange in
15 Europe, is that right?

16 A And Westinghouse, also, told me.

17 Q My question to you is, did Mr. Roemer tell you
18 that?

19 A Yes, sir, he did. Excuse me.

20 Q You say that your recollection, Mr. Cox, is that
21 you or someone in the exchange suggested to Westinghouse
22 that they not sell-- that these TV sets not be sold
23 through Mr. Penn, is that correct?

24 A Yes. That isn't what I said.

25 Q I am sorry. Could you clear us up on that?

1 gtime 44

Cox-cross

2 A We recommended to Westinghouse that they not
3 employ Mr. Penn as a representative.

4 Q I am sorry.

5 Wasn't that a somewhat unusual thing for the PX
6 to do?

7 A No, sir. No, sir. It was not.

8 Many manufacturers came to the exchange and
9 said: We want a representative. Can you recommend
10 someone?

11 We had a policy of not recommending anyone.

12 But it was not unusual to discuss the employment
13 of representatives with a vendor.

14 Q Was it your usual practice to tell vendors or
15 manufacturers whether they should use a representative
16 or not?

17 A We had no particular stand for or against rep-
18 resentatives.

19 Q You would tell the manufacturers: That's up to
20 you, Mr. Manufacturer?

21 A How he sold his manufacture was his own business.

22 Q Right.

23 Now, was it your normal practice to tell manu-
24 facturers particular representatives they should not use?

25 A In the case of Morty Penn, yes, we strongly

gt:mg 45

Cox - cross

recommended to Westinghouse that they not employ him because of the suspicions that Marty Roemer had.

Q Who was it who communicated that to Westinghouse?

A A man by the name of Vern Blevens.

Q He was Westinghouse, right?

A I talked to him on the phone and I made this recommendation.

Q Was Mr. Roemer present when you did that?

A I would say yes.

Q But certainly there is no question in your mind that Mr. Roemer was aware of the fact that you told Westinghouse not to do business with Mr. Penn, is that right?

A None whatsoever.

Q Pardon?

A No.

Q Do you recall what corporate name that transaction was made under on behalf of Mr. Penn?

A No, because the purchase order came in made out to Westinghouse.

Q It was the normal practice, was it not, that the manufacturer's representative would not be listed on the purchase order?

A No, sir, it was the practice that their name

gt:mg 46 Cox - cross

not be listed on the purchase order.

Q My question was -- I will withdraw that.

Are you saying that your telling Westinghouse not to do business with Mr. Penn was not out of the ordinary for normal PX procedure, but it was ordinary with respect to Mr. Penn?

A May I answer it this way, please.

We told Westinghouse that we had suspicions about Mr. Penn and that we felt he had something going with the buyer in Europe, Mr. Joe Johns, and we recommended that they not give him the line.

Q Well, now, were you keeping a list of manufacturer's representatives that you made recommendations like this on?

A No, sir. Never had an occasion to make another recommendation like that.

Q This was the only manufacturer's representative, then, that you told somebody not to do business with?

A Specifically, yes.

Q Did you tell any other manufacturers that they should not do business with Mr. Penn?

A I can't recall that. I don't know what lines he had.

Q Would there be any way that you could find out

gt:mg 47

Cox - cross

when you were working at the headquarters in New York what lines Mr. Penn did have?

A We often inquired from representatives what lines they had and they would never tell us and we found out who the representative was by inquiring from the manufacturers.

Q When you say "we," you mean --

A The buyers.

Q All the buyers?

A Right.

Q But my question, Mr. Cox, is how did you personally find out which lines Mr. Penn had?

A Because in the instances I have spoken of, Mr. Roemer in every instance went to the vendor and found out that Mr. Penn was a representative.

Q In the ordinary course of your business, you would just see purchase orders, is that right, coming in daily across your desk?

A We saw many, many manufacturers and manufacturer's representatives, daily. We had a vendors room that was full from morning until night.

Q And from looking at those, you couldn't tell who the manufacturer's representative was, is that right?

A Not unless we happened to know. We couldn't

gt:mg 48

Cox - cross

tell from looking at the purchase order.

Q You couldn't tell even whether there was a manufacturer's representative, am I right about that?

A That's right.

Q When was it that you went up the line, so to speak, complaining about Mr. Penn?

A Regarding the Toshiba transaction, the Scott record transaction, the Westinghouse transaction, the children's record transaction, and any other irregularities that we came across.

This was my job to report to my supervisor.

Q But you, I believe, testified that you reported to the military officer concerning Mr. Penn's -- the suspicions about Mr. Penn, is that correct?

A Eventually, yes, we did. We felt he had to know.

Q When was that report made?

A Well, the order was held up for many months and it was some time during-- oh, within three or four months, I would say, or two or three months after we received the order.

I can't remember the dates, Mr. Wohl.

Q Can you give us the year at all?

A I said earlier I thought it was in 1962 or 1963, early 1960s.

1 gt:mg 49 Cox-cross

2 Q The time when you reported to the Colonel that
3 you thought that Mr. Penn was making payoffs was in the
4 early 1960s?

5 A It was between 1962 and 1964

6 Q And how many people did you report this to --
7 I will withdraw that. Excuse me.

8 I just want to ask you, how many people did
9 you make this report to when Mr. Roemer was present?

10 A Always. Mr. Roemer was always present when I
11 made these reports.

12 Q How many such reports were there?

13 A I just answered a question when I said that
14 there were four that I could specifically recall I
15 don't remember others.

16 Q Are you saying four conversations or four
17 incidents which led to a series of conversations each
18 time?

19 A There was a conversation after each incident,
20 yes, after each purchase order.

21 Q And who was the conversation with?

22 A Either Mr. Gilhooly or Mr. Cotton and Colonel
23 Rahn.

24 Q Are you saying that these would be like, one
25 meeting with all the people present or are you saying--

1 gt:ing 50

Cox-cross

2 A No, sir. My immediate superior would be Mr.
3 Gilhooly. He was not always there, he traveled a lot.
4 If he was not there, I went to Mr. Cotton, who was Mr.
5 Gilhooly's immediate supervisor.

6 In the case of Colonel Rahn, we finally decided
7 that all of this had to be brought to his attention, the
8 information that we then had, so we went to Colonel Rahn.

9 I believe Mr. Cotton was present at the time,
10 Mr. Roemer, myself.

11 Q How many times did you make a report to Colonel
12 Rahn?

13 A Several times. I can't remember how many.
14 Several times, sir.

15 Q On the times you made the report to Colonel
16 Rahn was that on various specific incidents or was that
17 just one one incident?

18 A On the incidents that we have talked about this
19 morning.

20 Q On the three or four that we have talked about?

21 A Yes, sir.

22 Q When you would report to Colonel Rahn, would
23 you also, before that, have had prior discussions, say,
24 with Mr. Cotton and Mr. Gilhooly?

25 A We had a chain of command which had to be observed

gt:mg 51

Cox-cross

through Mr. Gilhooly, through Mr. Cotton to Colonel Rahn.

Q So each time you go up the line, it is a series of three or four conversations concerning Mr. Penn's activities, is that right?

A Not necessarily; as I mentioned a while ago, Mr. Gilhooly traveled a lot and if he was not there, I went to Mr. Cotton. If Mr. Cotton was not there, I would go to Colonel Rahn.

Q And would Mr. Roemer be with you each time?

A Yes, sir.

Q Were there any written reports of the suspicions concerning Mr. Penn that you ever saw?

A In instances like this there was always a memo for the record written, yes, sir.

Q Did you write that memo?

A No, sir, the buyer would write it. In these cases we have spoken of, Mr. Roemer would write it.

Q Do you recall the name of Teletone? Is that the name of a company?

A Teletone? Yes. I think they made radios and phonographs.

Q Do you know whether or not that company was represented by either Morton Penn or ISSE?

A Yes, I think it was, Morty Penn, represented

1 gt:mg 52

Cox-cross

2 by Morty Penn.

3 Q Do you know whether or not during the years
4 1962 through 1966 the exchange bought any merchandise
5 from Teletone?

6 A Yes.

7 Q How much did they buy?

8 A Can't remember the units, usually large quanti-
9 tities, because the European exchange was a large ex-
10 change so they are usually large quantities.

11 Q And what kind of goods were sold by the Teletone
12 Company?

13 A The specific item that I remember was a phono-
14 graph which was designed by Mr. Joe Johns, which was
15 unsatisfactory, which we later had to negotiate a return
16 for.

17 Q And that was after, I guess, you had bought
18 or the PX had bought a number of these items, is that
19 right?

20 A Yes, based on an order received from Europe, from
21 Mr. Johns in Europe.

22 Q And do you know whose department at the ex-
23 change at the New York office that order went through?

24 A Mr. Roemer's department.

25 Q Do you recall the name of a company called

gt mg 53

Cox-cross

Reeves Soundcraft?

A No, I don't believe so.

Q Do you recall a company called Cameo Parkway?

A I think those were Japanese radios, I believe

Q Do you recall whether or not the exchange ever
bought any merchandise from Cameo Parkway?

A No, sir.

Q Is there any other place you would have heard
that name other than in your business at the exchange?

A No, sir, except I happened to see it on the
signboard last night

Q Do you recall the name of a company called
Pickwick?

A Pickwick was a record company, I believe

Q Did the exchange system buy any goods from
Pickwick during the years 1962 through 1966?

A I can't be sure. I would think they did.

Q Do you have any recollection whether or not
Pickwick was represented by either Mr. Penn or ISSE?

A No, sir.

Q Do you recall a company called Capitol Records?

A Yes.

Q Do you know whether Capitol Records were rep-
resented by Mr. Penn or ISSE?

gtLug 54

Cox-cross

A Yes, I think it was.

Q Do you remember whether or not the exchange system made any purchases from that company during 1962 to 1966?

A I'm sure they did. Capitol was a big company and their records were in demand. I'm sure they did.

Q Were some of the orders, orders coming from Europe?

A Yes.

Q Do you recall the name of the company MGM records?

A Sure yes.

Q Do you remember whether that company was represented by Mr Penn?

A No, sir, I do not.

Q Do you remember whether or not the exchange made any purchases from that company during the years 1962 through 1966?

A I'm sure they did.

Q That was a large company as well, is that correct?

A Yes.

Q Have you ever heard of a company called Sonora?

A Only that I once owned a Sonora radio myself.
That is the only--

Q You don't recall any exchange business for that

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1 gt:mg 55 Cox-cross

2 one?

3 A No, sir, no, sir.

4 Q When was it for the first time that you were
5 asked by anyone whether you had any information for this
6 lawsuit?

7 A In 1970, September, October, 1970.

8 Q At the time that you were asked that question,
9 was the name Morton Penn mentioned to you?

10 A Yes, sir.

11 Q Did you have any trouble whatever in recalling
12 the name at that time?

13 A No, sir.

14 Q It was a rather notorious name in the office,
15 is that right?

16 A Yes.

17 MR. WOHL: No further questions.

18 REDIRECT EXAMINATION

19 BY MR. HOFFINGER:

20 Q Do you recall seeing me in 1970?

21 A Sir?

22 Q Do you recall seeing me in 1970?

23 A Yes, sir.

24 Q And at that time, did I indicate to you something
25 about the charges in the case?

gt:mg 50

Cox - cross/redirect

A About what?

Q About what the charge was in the case.

A Yes.

Q And did I tell you about the name Morton Penn?

A Yes, sir

Q And did I mention to you at that time the name
Fritz Mintz?

MR. WOHL: I will object to that

Q Well, had you ever heard the name Fritz Mintz
in the early--

MR. WOHL: Objection.

THE COURT: Sustained

MR. HOFFINGER: I will withdraw the question.

Q Did you ever hear the name Fritz Mintz in the
early 1960s?

MR. WOHL Objection.

THE COURT: I will permit it.

A No sir.

Q Now, take your mind back to the early 1960s,
not to 1970 and thereafter, but to the arly 1960s.

In the early 1960s you told us you heard the
name Morton Penn, you know who Joe Johns was, is that
right?

A Yes.

gt:mg 57

Cox-redirect

MR. WOHL Objection I don't think counsel
should be making speeches at this point.

MR. HOFFINGER: I am not making a speech I
want to get --

THE COURT: Yes. The questions are objection-
able as to form.

Now let us start over again and ask them properly.

Q The name ISSE, in the early 1960s, as you sit
here now, in the early 1960s, do you have a recollection
of having heard that name in the early 1960s?

A Yes I think so.

Q But you are not sure?

A No.

MR. WOHL: Objection.

MR. HOFFINGER: No further questions.

THE COURT: Any further questions?

MR. WOHL: No, your Honor.

THE COURT: All right.

Thank you, Mr. Cox you may be excused.

(Witness excused.)

THE COURT: All right. The next witness.

MR. HOFFINGER: I call Mr. Gilhooly, please.

...

1 gt:mg 58

Gilhooly-direct

2 J O H N G I L H O O L Y, called as a witness
3 by the defendant, having been first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HOFFINGER:

7 Q Mr. Gilhooly, were you ever employed by the PX
8 System?

9 A Yes, I was. In fact, today is the first day
10 of my retirement I completed 24 plus years as of yester-
11 day.

12 Q You joined then, the exchange in --

13 A In 1950.

14 Q Prior to that, had you been in the Service?

15 A Yes. From graduation from college I was in
16 the Army for four years with the Quartermaster Corps
17 in the CBI Theatre

18 Q What was your rank?

19 A I was a Major overseas and currently Lieutenant-
20 Colonel in the United States Army Reserve.

21 Q Are you married?

22 A Happily so with a lovely wife and lovely daughter.

23 Q In 1962 - well can you tell us what position
24 you held in the late 1950s and early 1960s?



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Gilhooly-direct

A Yes. In 1957 I was selected as the deputy chief of the purchasing branch and I acted in that capacity for five years, and in November of 1962, I was elevated to the position of Chief, Purchasing Branch, and in that position, I continued for the remaining five years.

Q So from November of 1962 until some time in 1967 you were chief of the purchasing branch?

A That is correct.

Q And how many groups or - can you give us some idea of the organization beneath you, so to speak?

A Yes.

We were the resident buyers for all overseas exchanges and in the purchasing branch we had approximately four or five major groups, and I would say we had about eight to ten executives in each one of those groups.

So under my overall supervision were approximately 40 executives and approximately 200 additional hourly employees.

Q Was Mr. Cox one of the people under your supervision?

A Yes. He was one of approximately four commodity group managers under my direct responsibility.

Q After 1967 what position did you hold?

A At that time our headquarters moved from New York

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2 City to Dallas, Texas, at which time I became an Assistant
3 Director of Procurement and Chief of the Soft Lines
4 Branch.

5 Q And how many people would you say were under
6 your jurisdiction then?

7 A Well, in that two-hat capacity, it ran into
8 substantially more. You might add possibly 40 or 50
9 more persons.

10 Q When you retired as of yesterday, what position
11 did you retire from?

12 A I was Deputy Chief or second in command of our
13 Southeastern Division which operates all the PX's in
14 the six-state area in the Southeastern part of the
15 United States, having about 600 executives and seven
16 thousand employees.

17 Q Going back to the time that you became the
18 Chief of Procurement in November of 1962, you told us,
19 can you give us an idea of your relationship-- well,
20 can you give us an idea of how you functioned in rela-
21 tion to the European part of the exchange in connection
22 with orders they might be sending through to your people?

23 A Yes.

24 As I mentioned previously, you might consider
25 us a resident buying office where requirements were

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2 prepared by various overseas exchanges all over the
3 world and these requirements were forwarded to our New
4 York Headquarters.

5 At that point we had an executive assigned to
6 various categories and because of the fact that we were
7 the largest retail activities in the world this man had
8 to be a very strong professional.

9 He would review these requirements, because he
10 was most knowledgeable about his markets, to confirm
11 that requirement was a proper one, that it represented
12 a brand that enjoyed consumer acceptance and that the
13 price was correct.

14 Our military customers were no different than
15 our normal customers. They have their brand preferences.

16 THE COURT: Mr. Gilhooly, may I suggest that
17 you listen carefully now to the questions of counsel and
18 answer the questions and don't give us anything more.

19 THE WITNESS: Thank you, sir.

20 THE COURT: And as briefly as possible.

21 All right Next question.

22 Q Was Mr. Roemer such a person as you have described?

23 A Yes, he was --

24 THE COURT: The answer is yes, isn't it?

25 THE WITNESS: Yes.

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THE COURT: All right, period.

Go ahead.

Q And what was his particular function?

A He was one of these buyers in the resident office that reviewed the requirements of certain categories submitted by overseas exchanges.

Q Do you recall what his particular area of review was?

A Yes.

Q In what group was he, so to speak?

A In the greater part of these years he was responsible for the procurement of electronics, records and luggage

Q In the normal course of business you were saying that you were a resident buying office responding to European requisitions.

A That is correct.

Q In other words, an order would come through from the BES let's say, in electronics?

A Yes.

Q And that would be given to Mr. Roemer, so to speak, or his area?

A That is correct.

Q If in the normal course of business, Mr. Roemer

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2 felt it was a good value, would the order be filled by
3 him?

4 A That is correct.

5 Q And if he did not feel so, what was he supposed
6 to do at that point?

7 A He had the right not to process this requirement
8 as a contracting officer.

9 However it was expected of him that under those
10 circumstances, he would report the details of his concern
11 to his next level of supervision.

12 Then with their assistance they would attempt
13 to resolve the problem, call it to the attention of the
14 overseas exchange who specified the requirement and resolve
15 it mutually.

16 Q Right.

17 Who was Mr. Roemer's immediate superior that he
18 was supposed to have reported to during --

19 A Mr. Bob Cox.

20 Q Did Mr. Roemer have the authority to substitute
21 an order, so to speak? If Europe ordered, let's say,
22 records from a particular company, could Mr. Roemer go
23 out and get those same records from another company?

24 A No, he was expected to discuss the problems
25 and communicate with the overseas exchange before a

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2 substitute would be considered.

3 Q But did the substitute need the concurrence of
4 the European exchange?

5 A Generally it was solicited. He would not uni-
6 laterally substitute.

7 Q You recall the name Joe Johns, do you not?

8 A Yes, I do.

9 Q Was he the man in Europe putting through the
10 orders to Mr. Roemer's department?

11 A That is correct.

12 Q Have you ever heard the name Horton Penn?

13 A Yes, I have.

14 Q Did Mr. Roemer ever bring the name of Morton
15 Penn to your attention in connection with an order that
16 Joe Johns placed?

17 A Yes. There were a number of occasions when--

18 THE COURT: The answer is yes.

19 Q Was there more than one occasion? Just yes or
20 no.

21 A Yes, there was.

22 Q Can you recall every occasion on which he did
23 this?

24 A No. There are only two occasions where I can
25 remember it; although I recall many in general, just two

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2 specifically.

3 Q Can you tell us which was the first occasion
4 on which this occurred?

5 A One was a requirement for Scott records forwarded
6 by Mr. Joe Johns.

7 Q Mr. Roemer called to my attention this purchase
8 requisition as being somewhat unusual. He felt it did
9 not represent a proper value and as a result, he was most
10 reluctant to process it in the manner in which it was
11 forwarded to him.

12 Q Did he bring up the name of Morton Penn in
13 connection with that order?

14 A Very much so. He felt that --

15 MR. WOHL: Objection, your Honor.

16 Would it be possible to establish a date?

17 MR. HOFFINGER: I will.

18 MR. WOHL: I think it is proper to do it
19 beforehand.

20 MR. HOFFINGER: I beg your pardon.

21 THE COURT: What is the objection?

22 MR. WOHL: The objection is that we are now
23 testifying about some events that occurred and there is
24 no date that has been established so we don't know whether
25 it is relevant to this --

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2 MR. HOFFINGER: May I object to the U. S.
3 Attorney interfering with my examination?

4 THE COURT: No, you may not object. He has a
5 right to object to me.

6 MR.HOFFINGER: He is suggesting--

7 THE COURT: Don't argue with me, please.

8 You say that he is testifying about a conversa-
9 tion and you want to know where it was and when?

10 MR.WOHL: That is exactly right, your Honor.

11 THE COURT: Yes. I understand that, but
12 this is the first time that has been attempted in this
13 trial so far as I know.

14 I mean, nobody has ever insisted on that before.

15 All right, if you can.

16 MR. HOFFINGER: Yes, we will.

17 THE COURT: Time, place and who was there.

18 MR. HOFFINGER: May I just continue?

19 Q When this thing-- I was in the middle of a
20 question, your Honor, that is why --

21 THE COURT: You are talking about some occasion
22 when Mr. Roemer and this witness spoke about Morton
23 Penn.

24 MR.HOFFINGER: I want to get --

25 THE COURT: In connection with Toshiba.

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2 MR. HOFFINGER: I am not. It is in connection
3 with Scott.

4 I beg your pardon.

5 THE COURT: Start all over again and then fix the
6 time and place and, of course, if we can't, we can still
7 go on.

8 MR. HOFFINGER: May I just let him answer the
9 question I put to him?

10 THE COURT: What was the question?

11 MR. HOFFINGER: I asked whether or not he had
12 brought up the name of Morton Penn in connection with
13 the order.

14 THE COURT: Which order?

15 MR. HOFFINGER: The Scott order.

16 THE COURT: All right. And the answer is yes
17 or no.

18 A The answer is yes, your Honor.

19 Q What did he say?

20 A Mr. Roemer reported to me that it was his
21 opinion and his concern that Morty Penn had undue influence
22 in the establishment of that requirement for Scott records.

23 Q When you say requirement, what do you mean by
24 that?

25 A Well, any transaction from overseas is identified

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as a requirement. It is not an absolute purchase until the buyer releases it for procurement.

Q You told us that in November of 1962 you had become the Chief of Procurement?

A Yes.

Q Did this occur before you became the Chief or after?

A As you can imagine, going back these many years, it is difficult--

THE COURT: You mean you can't answer?

THE WITNESS: Well, I can approximate, sir, if you would like me to do that.

THE COURT: All right, please.

A I would say a year and a half or so after I became Chief in November 1962.

THE COURT: All right.

Q You mean a year and a half after November?

A After November 1962, if I could guess.

Q It certainly was not before you became Chief?

A No.

Q What happened after he brought this to your attention?

Well, do you recall what the incident was? I mean, what was it that he was telling you other than what

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you told us already about this particular requirement, as you put it?

A Right. Right.

One must realize that we --

THE COURT: Just what did he say?

THE WITNESS: Well, I have to explain what --

THE COURT: No. What did Mr. Roemer say?

A Mr. Roemer said that the requirement for Scott records was overpriced and was not a proper value at the price reflected on the purchase order.

Q Can you remember how much the price was? What are we talking about?

A Well, I should explain that these were not new records and they were what is called in the industry a cut-out. They appeared to be surplus to someone's need and this type record does not command the higher price of a new record.

Therefore, my best recollection is the price was somewhat over a dollar or so.

Q How many records are we talking about?

A I really don't remember, other than I thought the quantity exceeded \$100,000 value.

Q And can you recall what Mr. Roemer did in connection with that order that came in from Joe Johns after

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3 he brought it to your attention?

4 A Yes, I can.

5 Q What did he do?

6 A He found out in the industry where these records
7 came from--

8 THE COURT: Is this what he told you?

9 THE WITNESS: That is correct, yes.

10 THE COURT: All right. Later, I take it?

11 THE WITNESS: That's right.

12 THE COURT: In your office?

13 THE WITNESS: That is correct.

14 THE COURT: And who was there with him?

15 THE WITNESS: I'm not-- I don't recall, sir,
16 exactly. Possibly Mr. Cox. I do not know that to be a
17 fact.

18 THE COURT: All right.

19 THE WITNESS: Right.

20 A And he indicated to us that he was able to
21 find out that these records were purchased from the prime
22 manufacturer at a lower price, and I am happy to say that
23 subsequently Mr. Roemer was successful in getting these
24 records at a lower price than originally specified by
25 Joe Johns in his requisition.

Q Can you recall how much money he saved the

1 gt:mg 71

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2 exchange on that one transaction?

3 MR. WOHL: Objection.

4 A It is difficult.

5 THE COURT: Sustained.

6 Q You mentioned that there were two occasions
7 that you specifically recall and you have told us about
8 one.

9 A Yes.

10 Q Can you recall any other?

11 A Yes, I can.

12 Q What was the other one?

13 A There was a requirement for--

14 MR. WOHL: Objection, unless he is going to get
15 the time in here.

16 THE COURT: This is something that Mr. Roemer
17 reported to you?

18 THE WITNESS: That is correct.

19 THE COURT: When?

20 THE WITNESS: Somewhere within a year or so of
21 this other event.

22 THE COURT: Afterwards?

23 THE WITNESS: I honestly can't say whether it
24 was before or afterwards.

25 THE COURT: It was a year or so afterwards or

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before?

THE WITNESS: Yes, I would say so.

THE COURT: Where did he report this to you?

THE WITNESS: He reported this in my office,
sir.

THE COURT: Who was present when he did so?

THE WITNESS: I do not recall. Possibly Mr. Cox.

THE COURT: All right.

Now let's go on.

Q Was it after you had become Chief of Procurement?

A Very definitely.

Q What is it that you can recall he reported to
you?

A Mr. Roemer expressed again, concern that a
requirement came in for a large number of Westinghouse
TV units for which he thought Morty Penn had an undue
influence in persuading Mr. Johns to specify.

The reason Mr. Roemer was concerned about
Westinghouse is that being an electronics specialist, it
was his responsibility to know the relative -

THE COURT: Is this all what he told you?

THE WITNESS: Yes, it is.

THE COURT: All right

A He had to know the relative brand preferences of

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that particular brand in American industry and Westinghouse, during those years of 1963 or 1964, did not enjoy the highest sales acceptance by the consumer, and he felt discomfort that such a requirement was being given to a brand when other brands of higher acceptance on the part of the consumers were being ignored.

Q Do you know what happened to that order, the Westinghouse order?

A Other than our getting into some debate with the overseas exchange, I honestly don't recall what happened to that order.

Q You mean whether it was placed or not?

A Whether it was placed or not. My memory fails me.

Q You have indicated that there were other occasions on which he brought up the name of Morty Penn in connection with Joe Johns?

A Yes, I have.

Q But you can't recall specific order other than the two you have told us about?

A That is correct.

Q In the normal course of your duties, were you obliged to pass on any of these suspicions that Mr. Roemer was telling you about?

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2 A Yes, it was expected of me.

3 Q And did you?

4 A Yes, I did.

5 Q To whom did you pass it on, if you recall?

6 A To the then Deputy Director--

7 MR. WOHL: I will object to this, unless Mr.
8 Roemer was present when this occurred.

9 THE COURT: Was Mr. Roemer present when you
10 informed your superior?

11 THE WITNESS: I can't recall that he was, sir.

12 THE COURT: I beg your pardon?

13 THE WITNESS: I cannot recall that he was.

14 THE COURT: All right.

15 I will sustain the objection.

16 MR. HOFFINGER: May I be heard for a moment
17 at the side bar about this?

18 THE COURT: No, I won't. Let's go on.

19 Q When Mr. Roemer told you these things, did you
20 ever indicate to him what, if anything, you intended to
21 do with the information that he was giving you?

22 MR. WOHL: I will object.

23 THE COURT: Yes, and I will overrule the objection.
24 Go ahead.

25 A Yes, he was aware --

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THE COURT: No, what you told him.

Q What did you tell him?

A I told him that it would be relayed to our other higher executives.

Q And when you told him about this relay, -- we are talking about around the time of the Scott record deal?

A Yes, within, as I explained to the judge, about a year or so of that period, one way or the other.

THE COURT: Either a year before or a year after.

All right.

Q But certainly after you had become Chief of the Procurement Branch?

A Yes, sir.

MR. WOHL: Objection.

THE COURT: Overruled.

Q Did you have anything to do with reviewing his performance after Mr. Cox reviewed his performance?

Yes or no?

MR. WOHL: Objection.

THE COURT: Sustained.

Q Can you tell us what his reputation for integrity was while he was working in any capacity that you know of for the Exchange?

A Yes, I can.

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Q What was it?

A He enjoyed a reputation for integrity, loyalty--

THE COURT: No, just integrity.

Was it good, bad or indifferent?

THE WITNESS: Equal or better than any man I know.

THE COURT: All right.

Next question.

MR. HOFFINGER: No further questions.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. WOHL:

Q When you say that Mr. Roemer told you about undue influence that he suspected, what is it you are referring to, Mr. Gilhooly?

A Yes, sir, right.

Q I will withdraw that. Excuse me. Let me rephrase that.

I assume that Mr. Roemer did not use the phrase "undue influence," did he?

A That I would say would be my choice of words, but it was the connotation I received from whatever he said.

Q Could you tell us what it was that Mr. Roemer told you?

A Yes. Okay.

He felt that the requirement was such that it was not a proper one and it reflected a purchase for which there might have been some-- I use inordinate relationship between the military representative and the buyer.

Again, I don't want to say more than I should here.

THE COURT: He told you, in substance or in words, that he thought that Penn was paying Johns money as a bribe or a kickback?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q On how many occasions did he tell you that, that is, did Mr. Roemer tell you that?

A The name Morty Penn was used quite often during my tour as chief -- the name was mentioned often as being a person behind a buyer. However, in the case of the specifics, the only two I specifically recall are the two already mentioned, Scott records and Westinghouse.

Q When the name Morty Penn was mentioned in the office there during your tenure, it was in connection with the proposition that it appeared that Penn was paying people off, is that correct?

A Yes, that is correct.

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Q He had a reputation for doing that around there, would you say that?

A Yes.

Q Were there any other manufacturers' representatives who had similar reputations?

A Yes, there were.

Q What were their names?

A I can remember the name -- again, this is all alleged and I don't know it to be a fact -- Sidney Rosenstein comes to my mind, a man named Braverman had a substantial involvement.

They are the only two that come specifically to my mind now as sometimes used in the same vein, if not bribery, possibly entertainment.

Q When the Westinghouse TV sets -- withdrawn.

Did you testify about a Westinghouse TV set transaction?

A Yes, I did.

Q After the discussions relating to that, were the Westinghouse TV sets purchased or were they not purchased?

A I didn't clearly recall that they were.

Q It is possible that they were not purchased at all, is that right?

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2 A As far as my recollection went, that was my
3 best recollection.

4 Q Your best recollection is that the Westinghouse
5 TV sets were not purchased?

6 A I did not know whether they were purchased . Is
7 that the same?

8 In other words, I knew the difficulties, the
9 correspondence with the overseas exchanges, but I did
10 not clearly recall whether they were purchased or not, or
11 I did not know they were purchased.

12 I guess that might be a proper phrase.

13 Q In any event when you acted on this transaction
14 in the New York office you learned through this purchase
15 order that some PX in Europe wanted some television sets,
16 is that right?

17 A We learned that first, of course Yes, the
18 requirement came through --

19 Q That is what the purchase order told you, isn't
20 that right?

21 A That is what the purchase requisition-- it is not
22 a purchase order until it is signed by the contracting
23 officer, but the purchase requisition specified their
24 request for Westinghouse, that is correct

25 Q But they also told you in addition that they

1 eting 80

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2 wanted a certain size load of television sets, is that
3 correct?

4 A A certain type. I didn't quite understand your
5 question, sir.

6 Q By receiving this order for Westinghouse tele-
7 vision sets, you learned that they wanted a lot of tele-
8 vision sets or a certain load of television sets, and you
9 learned that those television sets they ordered were
10 Westinghouse television sets, isn't that right?

11 A That is correct, sir.

12 Q And Mr. Roemer's proposition to you was that
13 there was another kind of television set that was in some
14 way more desirable or perhaps many other kinds that were
15 more desirable? Is that right or not?

16 A He mentioned many others, that is correct.

17 Q After the Westinghouse transaction do you know
18 from whom the television sets were in fact purchased?

19 A I do not recall that.

20 Q Do you recall whether the company from whom the
21 television sets were purchased was represented by a manu-
22 facturer's representative?

23 A I do not know that is so, but I would say prac-
24 tically every major brand we bought was represented by a
25 manufacturer's representative. You couldn't buy anything

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without possibly having a line represented. That was the way of life.

Q Was the company that eventually sold the television sets represented by either Mr. Rosenstein or Mr. Braverman?

A I think I told you I don't know what happened. You are asking me a question. I told you I do not know whether they were ever purchased or not so obviously I can't answer your question.

Q After the discussion on the Scott records, were the Scott records purchased?

A Yes, they were.

Q Were they purchased through a manufacturer's representative or not?

A I have to qualify. We never purchase through any one. We place the order directly with the manufacturer and there is no reference in anything written that there is a military rep involved, so nothing was purchased through a representative, it was purchased directly from the supplier identified in the purchase requisition.

Q But the purchase requisition never referred to representatives, is that right?

A That is correct. That is correct.

Q So by just looking at the papers, you never know

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whether there is a representative, is that correct?

A That is correct.

Q What the representatives do in effect, is to put together a transaction but they don't actually ever own the goods, is that a correct statement?

A You will have to rephrase the question, because I don't understand it.

I will withdraw it.

How would you describe what the role of the manufacturer's representative was?

A The role of the manufacturer's representative could be quite a legitimate one.

Q Excuse me

MR. WOHL: I move to strike that as unresponsive.

THE COURT: I will let it stand.

Q Just can you briefly describe what the role was.

A Yes. But --

THE COURT: You mean with reference --

A The question is vague so I have to put specifics on it Okay.

Yes, American industries sold to the exchange service. We were an unusual account We had 39 countries overseas. It was sometimes uneconomical for a manufacturer to send one man to each one of these 39 countries to sell

1 this particular product. Manufacturers usually, instead
2 of having their own corporate employee call on the ex-
3 change service, diverted the marketing effort to a
4 specialist who called on the military.
5

6 This man only got a commission if he sold the
7 merchandise, and some manufacturers have identified this
8 as a more economical method of marketing their products.

9 So in itself there is nothing bad about being
10 a military representative.

11 Q When the Scott record complaint was made by
12 Mr. Roemer that you have testified about, were the Scott
13 records eventually purchased by the PX or not?

14 A To my knowledge, they were.

15 Q Did anyone perform the manufacturer's representa-
16 tive function in connection with that transaction?

17 A As you know, as I said, there is nothing on
18 the purchase order to identify that.

19 I understand that there was a military repre-
20 sentative involved in that transaction.

21 Does that answer your question?

22 Q Who was it?

23 A I understand it was Morty Penn. ✓

24 Q Was there any other military representative in-
25 volved in that transaction?

A Not that I am aware of.

Q But you don't know, is that correct?

A That is correct.

Q On those other occasions, when Mr. Roemer reported to you that he thought there were transactions in which Mr. Penn seemed to be paying off people, were those transactions ultimately effectuated anyway or were those transactions stopped?

A It varied on an individual case-by-case basis.

I think I can't answer that in a general fashion.

In some instances they represent a product at the right price, in other instances they may not, so it is difficult for me to give you a general answer. You will have to be more specific.

Q On occasions, when the transaction would be stopped as a result of Mr. Roemer's complaint I gather that sometimes there would be an alternative transaction made to fill that need is that right?

A That is quite correct.

Q Do you know whether in the alternative transaction, the material that was bought, whether there was a military representative involved?

A The question is so hypothetical it is difficult to answer, other than my repeating it in the general

1 gt:mg 85

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2 fashion; I don't want to belabor it ----

3 Q If you can't answer it, just say you can't answer
4 it.

5 A All right.

6 Q Do you know what Mr. Johns' function and position
7 was during 1962 through 1966?

8 A Yes, I do.

9 Q What was that?

10 A He was a buyer and an inventory management special-
11 ist in the employ of the European Exchange System.

12 Q Located in Europe, is that right?

13 A Located in Europe.

14 Q And it would be his function to make the initial
15 arrangement for the procurement of goods, is that correct?

16 A Your use of the word "arrangement" I don't under-
17 stand.

18 He was the man who would identify and specify
19 the quantity of what he wanted.

20 Q He would initiate the order, would that be a cor-
21 rect statement?

22 A That is correct. That is correct.

23 Q When he initiated these orders, did he necessarily
24 sign a purchase order?

25 A He was not the contracting officer and his

signature is not the binding element.

He authenticated the requirement. He signed off that that was what he wanted, but his wasn't the official signature on the purchase order; that was done in New York City, by the designated contracting officer.

Q And one of those designated contracting officers was Mr. Roemer, is that correct?

A That is correct.

Q Did Mr. Johns have certain people who were subordinates underneath him over there in Europe?

A I would think so.

Q And did he also have the ability to tell them to sign off on purchase orders in his behalf?

A Again, your use of the words "sign off of purchase orders" is unusual.

I do not know clearly whether he delegated that responsibility to his subordinates. I do not know that to be a fact.

Q Well, would it be a routine thing if sometimes, if he had subordinates, to have subordinates sign the purchase order, originate the purchase order, instead of himself?

A I don't know it to be a fact. It would be doubtful. My best answer.

Q Have you ever met Mr. Penn?

A I do not recall ever meeting him.

Q I gather a substantial amount of your information concerning Mr. Penn came from Mr. Roemer, is that a correct statement?

A And other buyers.

Q But a substantial amount came from Mr. Roemer, is that correct?

A That is correct.

Q Did you ever accompany Mr. Roemer to Mr. Penn's office?

A No.

Q Did you ever participate in any telephone conversation between Mr. Roemer and Mr. Penn?

A Not that I can recall.

MR. WOHL: No further questions, your Honor.

THE COURT: Anything else, Mr. Hoffinger?

MR. HOFFINGER: No, your Honor.

THE COURT: All right. Thank you, Mr. Gilhooly.

You may be excused.

(Witness excused.)

THE COURT: All right. I think it is close enough to one o'clock that it would only be right and fair to excuse the jury for the week-end.

We will meet here on Monday morning at 9:30.

Now you know where the jury room is.

Don't discuss the case amongst yourselves or with anybody else over this week-end, which we all hope to be very pleasant for you.

You may retire and we will see you Monday morning.

(Jury left the courtroom.)

THE COURT: Mr. Hoffinger, what about a progress report for planning purposes?

MR. HOFFINGER: Can we do this off the record?

THE COURT: Yes, we can do it off the record.

I am not going to hold you to anything.

(Discussion off the record.)

(Adjourned to November 4, 1974, at 9:30 a.m.)

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2 that we are waiting on a witness and just as soon as the
3 witness comes, we will start court.

4 MR. HOFFINGER: I will just call my office, your
5 Honor, to see where the witness is.

6 (Pause.)

7 (Recess.)

8 (In open court, jury present.)

9 THE COURT: Good morning, members of the jury.
10 We note again with satisfaction that you were here promptly.
11 I am sorry we couldn't start exactly on time, but the Clerk
12 explained to you why we couldn't.

13 The Clerk tells me also that some of you quite
14 properly raise the question what happens tomorrow, which
15 is Election Day.

16 I should have told you this before for planning
17 purposes, but tomorrow, Election Day, is an official holiday
18 in the federal courts and, therefore, we won't sit tomorrow.

19 When we part company today we will meet again on
20 Wednesday morning at 9:30.

21 All right, Mr. Hoffinger.

22 MR. HOFFINGER: Mr. LaMarca, please.

23 ...

24 W I L L I A M L A M A R C A, called as a witness
25 by the defendant, having been first duly sworn,

2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. HOFFINGER:

5 Q Mr. La Marca, did you ever work for the PX System
6 in New York?

7 A Yes, I did.

8 Q Can you tell us when that was?

9 A I started some time in 1959 through 1966.

10 Q In 1966, when it had moved to Dallas, you left the
11 exchange?

12 A That is correct.

13 Q When was that?

14 A I believe it was some time in the late fall, prob-
15 ably November of 1966.

16 Q What is your present occupation?

17 A I'm an attorney.

18 Q And were you attending law school at the time you
19 worked for the exchange?

20 A Yes, part of the time. The last -- well, the
21 last two years -- actually, my first two years of law
22 school were the last two years with the Exchange Service.

23 I left the Exchange Service when the Exchange
24 Service moved to Dallas and I was employed by another
25 company and continued my education there.

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LaMarca - direct

Q Then you were attending law school in September of
1964?

A That is when I started.

Q While you were working for the Exchange?

A That's right.

Q Did you know Mr. Martin Roemer?

A Yes, I did.

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Q Did there come a time when you began to work in the same group or department as he did?

A Yes.

Q And when was that time?

A That was probably from the outset. When I started in 1959 I was -- I went into what was called the hard lines group, of which Marty was a part.

Q Did you work in electronics, in the electronics department or -- withdrawn.

In 1964 -- do you recall Mr. Roemer going to Europe?

A Yes, I do.

Q Do you recall approximately when that was?

A I don't know exactly, but I know by the time Marty went to Europe I'm pretty sure we were working together at that time.

Q When you say working together, would you explain what you mean by that?

A Yes. When I was first hired by the Exchange Service I went to work in the photographic area under a gentleman by the name of Ed Richie. Marty had a different department at that time.

When Mr. Richie retired, I was then responsible for buying photographic equipment, tape recorders, hi-fidelity

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equipment, and it was decided that this would be a natural move for me to join --

THE COURT: Wait. We don't need all this history of the operation of this organization.

Don't you want to know when it was that he began to work with Mr. Roemer?

MR. HOFFINGER: Well, yes.

THE COURT: Just what is the date?

THE WITNESS: It was sometime in 1964, your Honor. I don't know exactly when.

THE COURT: All right.

Q Was it before or after you started law school?

A It was around the time I started law school. I started, as I said, in September of 1964.

Q Was it before or after he returned from Europe?

A It was probably before, because I was working with Marty when he did go to Europe.

Q When you began to work with Mr. Roemer, did you have anything to do with orders coming through from Europe?

A Yes. We screened the orders that came through from Europe.

Q Were some of these orders assigned to you?

A Yes.

Q Who was the European buyer in electronics?

A Joe Johns.

Q Would it be part of your normal job to screen some of the orders coming from Joe Johns to the American PX System?

A Yes.

Q And was it part of Martin Roemer's job to do the same?

A Certainly.

Q Did you ever hear the name of Morton Penn?

A Yes, I did.

Q Did Martin Roemer ever mention that name in your presence?

A Yes, sir, he did.

Q Was it on one or more occasions?

A On a number of occasions.

Q Can you tell us what, if anything, he said on those occasions concerning Morton Penn?

A Marty was a very unhappy --

THE COURT: No. Just what did he say?

THE WITNESS: I will have to paraphrase, your Honor, because I don't remember exactly.

THE COURT: Tell us what he said, not your conclusions.

A Martin thought that --

THE COURT: Tell us what he said, not what he

thought.

A That Morty Penn was dishonest.

THE COURT: Well, is that what he said to you?

THE WITNESS: As I can recollect, your Honor, yes.

THE COURT: He said Penn is dishonest?

THE WITNESS: Yes, your Honor.

THE COURT: All right. Next question.

Q Did he mention anything -- "he" being Mr. Roemer -- did he mention anything about Joe Johns in connection with the statements about Morton Penn?

A Yes. But I must say I don't remember the exact --

THE COURT: He hasn't asked you that. You said yes. Now, next question.

A Yes.

Q What did he say?

A Mr. Hoffinger, I don't remember exactly what he said, but --

Q What is the essence of what he said?

A That Morty Penn and Joe Johns were working together.

Q Did he ever say these things in your presence to other people?

A Yes.

Q Can you tell us who those other people were?

A Yes, I am sure he said it in my presence before

Mr. Cox, Bob Cox, who was our group manager, to whom we reported, and I know he said these things in my presence to the then general counsel of the Exchange Service, John Latella, who was a colonel at that time.

Q In connection with his telling that to Colonel Latella, can you give us an approximate time in connection with -- can you give us an approximate time connected to some other events, perhaps, or some date?

A I believe that was the time Marty had gone to Europe and had been back for a short while and I believe that was when he was talking to Latella in my presence about the situation.

Q Did he say in your presence, he being Mr. Roemer, what he based this on?

A It was on his recent trip to Europe and that things, I suppose, he learned there. I don't know what else it could have been.

Q Did he connect it with the kinds of orders that Mr. Johns was sending through?

A Yes. Well, yes. The size of orders that would go to particular companies, we always checked that and I know Marty was concerned about the size of orders for particular companies.

THE COURT: Don't tell us what he thought, what he

1 6 gtcg 12

LaMarca-direct

2 was concerned about, his conclusions and opinions, just answer
3 the question.

4 Q Did he say that he was concerned about that?

5 A Yes, sir.

6 Q When you say the size of the orders, did Mr. Johns
7 have the authority -- withdrawn.

8 Was Mr. Johns sending through orders from Europe
9 for specific merchandise for specific manufacturers?

10 A Yes.

11 Q And did Mr. Roemer object to that on occasion?

12 A Yes.

13 Q Were there occasions on which Mr. Roemer fought
14 Mr. Johns?

15 A Yes.

16 Q And in connection with his fighting Mr. Johns,
17 did Mr. Roemer bring up the name of Morton Penn?

18 A Yes.

19 Q And is that the context in which Mr. Roemer men-
20 tioned to Colonel Latella that he felt that Morton Penn had
21 something going with Mr. Johns?

22 MR. WOHL: Objection.

23 THE COURT: Sustained.

24 Q What, if anything, did Colonel Latella say to Mr.
25 Roemer and you after Mr. Roemer said what he did?

6a qtcg 12a

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MR. WOHL: Objection.

THE COURT: Sustained.

A.M.

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1 pgcg 13

LaMarca-direct/cross

Q Did you continue to work with Mr. Roemer until Mr. Roemer resigned from the PX System?

A Yes.

Q Did you work fairly closely with him?

A Yes.

Q What was Mr. Roemer's reputation for integrity?

A He had an excellent reputation.

MR. HOFFINGER: I have no further questions.

CROSS-EXAMINATION

BY MR. WOHL:

Q You started working for Mr. Roemer in 1964; is that correct?

A That's correct.

Q Prior to that time, did you know Mr. Roemer at all?

A Yes, I did.

Q You worked in another section of the PX but not directly under Mr. Roemer; is that correct?

A That's correct.

Q In 1964, did you start to work directly under Mr. Roemer?

A That's correct.

Q Were you a contracting officer?

A Yes. To my best recollection I was.

Q In other words, you could sign purchase orders?

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LaMarca-cross

A Yes. That's correct.

Q Did you specialize in the electronics area when you worked for Mr. Roemer?

A I think that is correct.

Q Do you remember?

A I do remember I did.

Q Was there anyone else in the New York Headquarters specializing in the electronics areas besides yourself?

A Yes.

Q Who?

A A fellow by the name of Anthony DeCarlo worked with us there, and we had some clerks also who worked with our department.

Q Did Mr. DeCarlo have authority to sign purchase orders?

A Yes.

Q Did the clerks have authority to do that?

A No, they did not.

Q Was Mr. Roemer a supervisor of Mr. DeCarlo also?

A That's correct.

Q Mr. Roemer also specialized, to some extent, in the electronics area, did he not?

A Yes.

Q Was there anyone else in the New York Headquarters

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LaMarca-cross

who specialized in the electronics area?

A I don't remember.

Q The New York Headquarters was organized into commodity groups; is that correct?

A That's correct.

Q The people you mentioned as specializing in the electronics area was part of a commodity group that dealt in the electronics?

A That's right.

Q Was Mr. Roemer the supervisor of the group?

A Yes, he was.

Well, if you mean the electronics group --

Q Yes.

A Yes, he was.

Q And then he had a supervisor above him?

A Yes. That's correct.

Q Mr. Roemer also dealt in some other commodities besides electronics?

A Yes.

Q He supervised some other people who were not specializing in electronics but something else; is that correct?

A That's correct, but I would like to, if I might, add that some of us filled a number of hats. Some of us

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worked electronics and also worked in other areas. Specifically, we handled luggage and sporting goods. Most of us, I particularly, worked in all those areas.

Q Those were also areas that Mr. Roemer supervised?

A That's correct.

Q How often did you see Mr. Roemer?

A On a daily basis.

Q You would, from time to time, review purchase orders; is that correct?

A That's correct.

Q You had authority to sign the purchase orders; is that right?

A That's correct.

Q From whom did you receive the purchase orders that you would look at?

A Marty usually reviewed them first in the morning and distributed the orders usually to me and some other clerks too.

Q Would he also keep some for himself?

A Yes, he would.

Q If you approved the purchase order, that is you signed it, what was the next thing that would happen to the purchase order?

A The order, a copy of it, would be sent to the

manufacturer and shipment would be made ultimately.

Q Would it go back up through Mr. Roemer or not?

A Usually when I signed I gave them to Marty to review. That was generally it.

Q Was that generally the practice concerning the purchase orders worked on by Mr. DeCarlo also?

A Yes.

Q Then it was your understanding that Mr. Roemer would review all of these purchase orders relating to electronics?

A That's correct, basically.

Q He would check it over to make sure you had not made a mistake?

A That's right.

Q He had authority to either approve or disapprove those purchase orders that he had; is that right?

A Yes.

Q If you had approved a purchase order he could either question it or pass it along; is that right?

A That's right.

Q Do you know what happened to the purchase orders after Mr. Roemer acted on them in the normal course of events of the PX System?

A They were usually put in an out-box and sent

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for copies to be made to be sent to the manufacturer for shipment.

Q Then the manufacturer would ship the goods and the Exchange would pay for the goods; is that right?

A That's right.

Q When you were employed in the PX System it was called the Army and Air Force Exchange?

A Service, yes.

Q Exchange Service; is that right?

A Yes.

Q Was there an organization called ~~ISS~~ at that time?

A Yes.

Q Was there an organization called AAFES, something to that effect?

A Yes.

Q What was the relationship when you worked there between ~~ISS~~ and AAFES?

A The ~~ISS~~ group serviced the Army Exchanges; the Air Force serviced the Air Force Exchange.

Q Did your Air Force in New York supervise both?

A We didn't supervise it. We screened the purchases that came through.

Q Did you screen purchases for both?

A Yes, we did.

Q When, to the best of your recollection, was it that you first heard complaints along the lines that Mr. Penn appeared to be paying Mr. Johns, or something to that effect?

A To my best recollection it was around the time that Marty had gone or returned from Europe. He made a European trip to review the business and procedures in Europe, and when he came back -- I believe it was around that time.

Q When you say, "Around that time," how much latitude--

A I mean immediately upon return.

Q Prior to that time had you heard any complaints or suggestions to the effect that Mr. Penn was paying any money to anyone in the Exchange System?

A I don't remember. I really don't remember.

Q Prior to that time, had you heard any suggestions that Mr. Johns was receiving any money?

A Yes.

Q When had you first heard those suggestions?

A Probably from the time I started with the Exchange Service.

Q That was in 1959?

A Yes.

Q Do you remember from whom you heard suggestions of that sort?

A I can't really remember, but I believe Marty was

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LaMarca-cross

one of the people I heard from, among other people in our group, the buying group.

1 Q Do you recall any of the other people who from
2 1959 to 1964 were saying that Mr. Johns was receiving money?

3 A Any particular individuals?

4 I think Bob Cox talked about it on occasion, about
5 his concern. Those two particular people were a certainty.
6 I remember them talking about Johns' operation.

7 Q Were there other people?

8 A There may have been others who made complaints.

9 Q Is your recollection that any of the other buyers
10 said that Mr. Johns appeared to be accepting money?

11 A Yes.

12 Q But you don't recall what the names were, is that
13 correct?

14 A If you want me to give you suggestions as to who
15 I think it might be, I will be happy to do it, but I don't
16 remember exactly.

17 Q All right.

18 What is your best recollection?

19 A I think Mr. Savarese was someone who might have
20 told me.

21 I would rather not speculate.

22 I believe Frank Savarese was someone who said it
23 but I would rather not speculate because I'm not sure.

24 Q Did you ever actually meet Mr. Penn?

1
2 A I believe I met him once.

3 Q When was that?

4 A That was when Mr. Johns, Joe Johns, was in New
5 York on a buying trip and I remember being wout with him
6 one day and I remember meeting Penn that one time.

7 Q Where was that?

8 A That was at one of the manufacturer's showrooms.
9 I believe it was Philco. I'm not sure.

10 Q Mr. Penn and Mr. Johns were together at that time,
11 is that correct?

12 A We met him there.

13 Q Who is "we"?

14 A Joe Johns and I.

15 Q You were with Joe Johns and then you met Penn.

16 A I believe we all met at the showroom and Mr. Penn
17 was there.

18 Q Do you recall any other time when you actually
19 met Mr. Penn?

20 A No.

21 Q Did Mr. Penn ever come to the headquarters of the
22 PX office, so far as you could recall?

23 A I don't remember him ever coming there.

24 Q Did Mr. Roemer tell you whether or not he had any
25 actual knowledge concerning payments by Mr. Penn to Mr. Johns?

1
2 A No.

3 Q He just said he suspected it, is that right?

4 A That's right.

5 Q Did he say that it was not really established?

6 A He never said that, no.

7 Q Did Mr. Roemer ever tell you whether or not he had
8 met Mr. Penn?

9 A I think he had.

10 Q Do you recall what he said on that score?

11 A I'm reaching back, but words to the effect that
12 he thought Penn was a slimy character.

13 Q Did he say anything that suggested actually having
14 seen Mr. Penn in operation and that had caused him to ar-
15 rive at that conclusion?

16 A I think at least in the sense that he had seen
17 Penn and Johns together, I believe, and that, I think,
18 was the basis of his suspicion.

19 I'm reaching back. This is sometime ago.

20 Q Your recollection is that he had seen Penn and
21 Johns together and they acted in some kind of friendly way
22 and that increased his suspicion about an improper relation-
23 ship?

24 A No. I don't think that is accurate.

25 Q I'm sorry.

1
2 A It was not just in a friendly way. I think Marty's
3 suspicions were more than just because Johns and Penn were
4 friendly.

5 Q My question, sir, relates to what Mr. Roemer told
6 you about his actual observation of Mr. Penn and Mr. Johns.

7 A I don't recall. I don't recall.

8 Q What was it you were telling us a minute ago about
9 something to the effect that Mr. Roemer had seen Mr. Penn
10 and Mr. Johns on some occasion?

11 Can you explain more fully what you were talking
12 about?

13 A I'm thinking specifically of the same year that
14 Mr. Johns was in when I met Penn at one of the showrooms.
15 Marty and Johns were working together also during that
16 period. I recollect Marty being very upset with the way
17 Joe Johns conducted himself while he was in New York.

18 While we had no specific authority over Johns,
19 in fact we had none really, Marty was concerned as to where
20 Johns was doing his market shopping for goods for the PX's
21 and it is in that context that Marty was upset, the relation-
22 ship between Johns and Penn.

23 Q What did he say had convinced him or indicated to
24 him that there was this relationship?

25 A They would meet each other, that is, Penn and

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La Marca- cross .

Johns. I believe also Johns totally disregarded whatever advice Marty would give him with regard to up-to-date products in the market and go off on his way and do whatever he pleased.

Q Did Mr. Roemer ever say anything to you about what basis he had for saying that Penn and Johns would meet each other often?

A No.

Q Did he ever say whether or not he had ever seen them together?

A He probably saw them together. I'm sure he saw them together.

Q Why do you say that?

A Because as I saw Penn at this particular place, Marty had been shopping with Johns during that same visit, and while I can't recall specifically, I believe that it was during that visit that Marty had seen Johns and Penn together.

Q This is what Mr. Roemer told you, is that correct?

A Yes.

Q When you say that Mr. Roemer was shopping with Johns, could you describe exactly what would be that process?

A Sure.

One of our jobs in New York was to keep abreast

pg:mq 6

La Marca-cross

of the American market, new products that would come in the market. One of the reasons that the buyers from overseas came to New York was to benefit from the knowledge that we had because they were a lot of miles away and when they did come in, it was part of our job to take them into the so-called market, that is, visit the manufacturer's showroom, to bring them up to date on products, the availability, prices; those are the kinds of things that we performed for them.

Q So it would be your understanding that when Mr. Johns was in New York, he went out with Mr. Roemer to do this shopping, is that correct?

A Yes.

Q You worked for Mr. Roemer from 1964 through 1966, is that right?

A Yes.

Q On how many occasions during that period did Mr. Johns come in to New York?

A I don't remember. At least several trips.

Q Was it the normal practice on each of those trips for him to go out shopping with Mr. Roemer?

A It was not his normal practice. That was one of the problems we had, you see. Johns had control of a great deal of volume in Europe. He pretty much kept to himself as

a loner.

That was one of the problems we had, trying to inform this guy as to what was in the market.

He would make his appearance in the office, and as I recollect, he would just leave and not tell anyone where he was going, and we didn't see him any more.

I know Marty complained about that.

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1 gt:mg28

La Marca-cross

2 Q In other words, Mr. Roemer complained about the
3 fact that Mr. Johns was not taking him, that is, Mr. Roemer,
4 along on these shopping trips?

5 A Not that so much as he was not taking the benefit
6 of Roemer's experience in the market, that up-to-date prod-
7 ucts, prices and the relationship that Marty had built up
8 with specific manufacturers.

9 That is what Johns was not taking advantage of and
10 that is what Marty was complaining about.

11 Q In other words, Mr. Johns was not buying things
12 that Mr. Roemer thought he ought to buy, is that it?

13 A That's true.

14 Q He was buying things that Mr. Roemer didn't think
15 he ought to buy, is that it?

16 A Well, it may have not only been that, but it was also
17 buying them at prices that Marty felt were too high.

18 Q Did Mr. Roemer make suggestions as to certain
19 other things that Mr. Johns ought to be buying?

20 A Yes.

21 Q Do you recall what those things were that Mr. Roemer
22 suggested should be bought?

23 A No, I don't.

24 Q Did Mr. Johns accept those suggestions?

25 A Usually not.

812

1 g:mg 29

La Marca-cross

2 Q But sometimes he did, is that correct?

3 A I think he did.

4 Q How would you find out that Mr. Johns was coming
5 into town?

6 A Sometimes they would write-- he would write, Johns
7 would write in advance saying he would be in New York at a
8 specific time; sometimes he would just show up in the
9 office; in other words, without prior notification, as I
10 remember.

11 Q Were there other buyers in Europe, at the Exchange
12 System in Europe who also purchased in the electronics
13 field?

14 A I don't remember.
15 You mean in Europe?

16 Q Yes.

17 A In the EES with Johns?

18 Q Yes.

19 A I don't remember. Joe was the principal buyer.
20 He was the person we dealt with there.

21 Q Was it your understanding that there were people
22 under him, other buyers?

23 A I would just assume he had people working for
24 him, but I don't know for a fact.

25 Q When you say that from time to time Mr. Roemer
fought Mr. Johns, in your direct examination, you mean that

1 gt:mq 31

La Marca-cross

2 Q You think that the European buyers could put
3 through an order even though it was disapproved in New
4 York?

5 A Yes. At that time.

6 Q Are you sure of that?

7 A I'm not sure, but this is my recollection.

8 Q Were there some times when Mr. Johns would put
9 through orders and Mr. Roemer would not fight about them?

10 A Sure. That was a daily occurrence.

11 Q Mr. Johns put through a massive number of orders,
12 wouldn't that be a correct statement?

13 A That is correct.

14 Q So you are not saying that every order he put
15 through was rejected by Mr. Roemer?

16 A No. It would have been a constant turmoil. We
17 couldn't possibly have operated that way, no.

18 Q How many of these occasions when Mr. Roemer rejected
19 Mr. Johns' orders can you recall?

20 A I remember one specifically because it was the
21 most direct confrontation we ever had.

22 Johns was in on a visit and there was some question
23 about purchase orders that had come in prior to his visit
24 and Marty was making a very strong attempt to have Joe re-
25 consider those orders, as I remember, and that particular

1 gt:mg 30

La Marca-cross

2 Mr. Johns put through purchase orders that Mr. Roemer re-
3 jected, is that correct?

4 A Yes, that's right.

5 I mean --

6 Q Did he fight him in any other way?

7 A Well, he couldn't just reject the order because
8 we didn't have the authority to reject the order, but what
9 we could do is go back and say: You are buying wrong mer-
10 chandise, you are buying at the wrong prices, et cetera.
11 Things like that.

12 Q Mr. Roemer --- I'm sorry -- I didn't mean to inter-
13 rupt you.

14 A Essentially that we just couldn't say: We are not
15 going to place it.

16 We had to go back and talk with Johns to get his
17 authority.

18 Q Mr. Roemer had the ability to go to his supervisor
19 and make a complaint about a particular order, is that
20 correct?

21 A That's right.

22 Q And the New York Headquarters was definitely a
23 higher authority than these exchanges in Europe, isn't
24 that true?

25 A I don't think that was true at that time.

1 gt:mg 32

La Marca-cross

2 instance, Joe refused, the matter was brought to the front
3 office and I know there were cables back and forth between
4 our headquarters in Europe about what should be done. ✓

5 Q What was the commodity that was ordered at that
6 time?

7 A I don't remember. I don't remember.

8 Q Do you remember what company it came from?

9 A No.

10 Q Do you remember the size of the order?

11 A It was sizeable. I just don't know -- I can narrow
12 it this much, it was either in the electronics area or the
13 record area. It was either one of those two areas. ✓

14 Q Those were the primary two orders that Johns was
15 involved in?

16 A That's right.

17 Q Do you remember the date of this confrontation?

18 A No, I don't.

19 Q Was it after you started working for Mr. Roemer?

20 A Yes.

21 Q So that means it was after mid-1964, correct?

22 A It was in 1964, yes. 11 ✓

23 I don't know. It was after I started working
24 with Roemer. I don't remember what year it was, but it
25 was after I started working.

1 gt:mg 33

La Marca-cross

2 Q And you started working for Mr. Roemer about the
3 time you started law school?

4 A About September of 1964.

5 Q So it was after September of 1964 that this big
6 confrontation occurred, is that correct?

7 A I can't say that that is correct. It was after
8 I started working for Mr. Roemer.

9 Q When did you start working for Mr. Roemer?

10 A To the best of my recollection, it was around the
11 time I started law school. That's as close as I can pin-
12 point the time I started working for him.

13 Q But you are not sure, is that correct?

14 A No.

15 Q In other words, it is correct that you are not
16 sure?

17 A That is correct. I'm not sure.

18 Q Did this major confrontation occur right about the
19 time you started working for Roemer or after you had been
20 working for him for some time?

21 A It seems to me it was soon after I started working
22 with Mr. Roemer.

23 Q Are you just guessing on that or do you have a
24 recollection that that is the fact?

25 A I'm just recollecting. It is not entirely a guess,

1 gt:mq 34

La Marca-cross

2 but it is a recollection that I have.

3 Q But you are not sure that it was --

4 A I'm not sure, no.

5 Q When you say soon after, how long after you
6 started working for Mr. Roemer are you referring to as "soon
7 after"?

8 A That is ten years ago. I really can't pin it down.
9 But when I say soon, it probably was a matter of months. ✓

10 Q Would it be a correct statement, sir, to say that
11 as far as this confrontation goes, all you are really
12 certain of is that it occurred some time between when you
13 started working for Mr. Roemer in the middle of 1964 and the
14 time that Mr. Roemer left, which was in 1966?

15 A No, that is not accurate. That is not accurate.

16 Q Tell us what is an accurate statement of what
17 you--

18 A It was soon after. The closest I can get it to is
19 it was soon after I started working for Marty. Within
20 months. ✓

21 Q Did Mr. Roemer ever tell you anything else about
22 his contacts or run-ins with Mr. Penn other than what you
23 have already testified to?

24 A No, no, except that I -- you see, it is not as
25 clearcut as you are making it. It was a period of time

2 within which Marty was protesting about Penn's operation
3 with the European Exchange System and that, I believe, began
4 when Marty made the trip and when he came back, and it was
5 a continuing thing.

6 It wasn't just the one incident that-- it was not
7 one incident, it was a continuing thing.

8 Q Do you know if Mr. Roemer ever talked to Mr. Penn
9 about these complaints?

10 A I don't know.

11 Q Did Mr. Penn ever call your office?

12 A Me?

13 Q Yes.

14 A No.

15 Q Did Mr. Penn ever call Mr. Roemer?

16 A I don't know.

17 Q Do you have any knowledge of whether the fact
18 that Mr. Roemer was making these complaints ever got back to
19 Mr. Penn?

20 A I have-- well, yes, and I'm sure they got back to
21 Mr. Penn, because Marty was very vocal about it.

22 Q When you say you are sure they got back, is that
23 because Mr. Roemer told you he told Mr. Penn or anything of
24 that sort?

25 A No, it is because I think it may have gotten back to

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1 gt:mq 36

LaMarca-cross

2 Joe Johns, because Marty told Joe Johns that he was un-
3 happy with that relationship and it was in the form of of-
4 ficial wires to Europe about things that were going on
5 and in that way I think Mr. Penn understood Marty's posi-
6 tion.

7 Q You are just speculating on what Johns told Penn,
8 are you not, sir?

9 A That's right. That's right, I am.

10 Q But you are saying that it is clear to you that
11 Mr. Roemer had a number of confrontations with Mr. Johns.

12 A Yes.

13 Q And so you are satisfied that Mr. Johns was dis-
14 satisified with Mr. Roemer, right?

15 A I know Johns was dissatisfied with Mr. Roemer.

16 Q Did Mr. Roemer ever say that anyone else was
17 paying Mr. Johns other than just Mr. Penn?

18 A I don't remember.

19 Q Was there ever any official action taken, say,
20 between 1964 and 1966 to stop Mr. Penn from representing
21 manufacturers?

22 A I don't know.

23 Q When the phone was answered in the office that
24 you worked in with Mr. Roemer, who customarily answered
25 the phone ?

1 A Usually our secretary.

2 Q And then would she say anything?

3 A She would tell you who was calling.

4 Q Were you in the same area where Mr. Roemer received
5 his calls?

6 A Yes, yes. It was a wide open area just like this
7 and we had desks on the floor.

8 Q Do you recall whether there were any calls coming
9 in from Mr. Diamond?

10 A Who?

11 Q Mr. Diamond.

12 A No.

13 Q Do you recall any calls coming in from Mr. Penn?

14 A No.

15 From Mr. Penn?

16 Q Yes.

17 A I don't recall.

18 Q Do you recall placing any calls to Mr. Penn?

19 A I didn't place calls to Penn, no.

20 Q How about Mr. Roemer?

21 A I don't know.

22 Q Did Mr. Roemer ever say anything on the subject
23 of whether Mr. Penn had made any improper proposals to him,
24 that is, Mr. Roemer?
25

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LaMarca-cross

A No.

Q Did Mr. Roemer ever say anything on the subject of whether Mr. Penn had ever come out to his house?

A No.

Q Did Mr. Roemer ever say anything on the subject of whether Mr. Johns had come out to his house?

A That is very possible that Johns went to Marty's house. That is very possible, because it was not unusual for him to invite people to his house, overseas people.

Q This is Mr. Roemer, right?

A Yes, right.

Q Do you know where he lived when you worked there?

A In Paramus, New Jersey.

Q And he was married at that time, is that correct?

A Yes.

Q He had several children, is that correct?

A That's right.

Q Had you been to his house?

A Yes.

Q Did you know him when he lived on Willard Street in Paramus, New Jersey?

A Yes.

Well, Willard being the first residence? I don't remember which one was which, but I know during the time

1 gt:mg 39

LaMarca-cross

2 that we worked together Marty moved.

3 Q And one of those residences was on Willard Street,
4 is that correct?

5 A I don't remember the street, but it was in Paramus.

6 Q Do you recall whether his house had an upstairs to
7 it?

8 A No.

9 Q Do you recall any other disputes between Mr. Roemer
10 and Mr. Johns other than the one you mentioned, which was
11 this major confrontation?

12 A There were others and I know they were the subject
13 of wires, official wires, that went back and forth between
14 Marty and Johns. I don't know how many there were, but
15 there were others.

16 Q Do you recall any of the other companies involved
17 or any of the companies involved in any of these disputes?

18 A I really don't. I really don't. I don't recall
19 the companies.

20 Q Have you ever been to Mr. Penn's office?

21 A No.

22 Q Did Mr. Roemer ever tell you that he had been to
23 Mr. Penn's office?

24 A No.

25 Q I would like you to look at Exhibit 28 in evidence,

1 gt:mg 40

LaMarca-cross/redirect

2 sir.

3 Do you recognize who that is a picture of?

4 A Yes.

5 Q That is Mr. Roemer, is that correct?

6 A That's right.

7 Q Is that an accurate picture of how he looked at
8 the time you worked for him?

9 A Yes.

10 MR. WOHL: No further questions.

11 REDIRECT EXAMINATION

12 BY MR. HOFFINGER:

13 Q Mr. LaMarca, were you to Mr. Roemer's house more
14 than once?

15 A Yes.

16 Q A number of occasions?

17 A Yes, a few times.

18 THE COURT: Try to keep your voice up, please.

19 A A few times.

20 Q You testified that Mr. Roemer had problems with
21 Mr. Johns?

22 A Yes.

23 Q And you also indicated on cross that there were
24 orders that Mr. Johns placed that did go through?

25 A Yes.

2 Q Well, were the problems with Mr. Johns in the area
3 of prices and types of goods that were being bought?

4 MR. WOHL: Objection.

5 THE COURT: Sustained.

6 Q In connection with Mr. Roemer's complaining about
7 Mr. Penn and Mr. Johns, did he make some kind of specific
8 request of Colonel Lapella?

9 A Yes.

10 Q What was the request?

11 A I'm referring now to the specific incident when
12 we were sitting at the table that I talked about earlier.

13 Marty wanted to know how an investigation was
14 going or whether or not they were investigating the charges
15 that he had been making, that Marty had been making, and as
16 I remember, Lapella said to Marty, "Take it easy, you know,
17 not to get excited."

18 As I remember "things were being done, but it was
19 a question of getting the facts."

20 MR. HOFFINGER: I have no further questions.

21 THE COURT: Anything else?

22 RECROSS-EXAMINATION

23 BY MR. WOHL:

24 Q Just one further question.

25 Do you know what the name of Mr. Penn's company was?

1 GTjw

2 UNITED STATES OF AMERICA

3 vs.

70 Cr. 130

4 MARTIN L. ROEMER

6 November 6, 1974

7 9:20 A.M.

8 Trial Resumed

9 (In open court - jury not present)

11 THE COURT: Give me a minute to look at
12 this.

13 This request to charge, you appreciate,
14 comes at a very late hour.

15 MR. HOFFINGER: Yes, I do.

16 MR. GOLDSCHLAG: We apologize for that,
17 your Honor.

18 THE COURT: Yes. And I will try to pass
19 on it.

20 (Pause)

21 THE COURT: I conclude that I will not give
22 this requested instruction.

23 In the first place, it is a charge on the
24 facts and I follow a practice of not charging on the
25 facts. I charge the general principles applicable and,

1 gtjw 2

2 of course, counsel, knowing those general principles,
3 can argue on the facts in their summations to the jury.
4 But I, as a judge, giving instructions never give in-
5 structions that if they find a certain fact they must
6 acquit. I just don't do it.

7 On the first page, counsel are properly con-
8 cerned that Mr. Roemer had no notice of the existence
9 of the conspiracy and I charge that.

10 The second essential element that Martin L.
11 Roemer, knowingly and wilfully associated himself with
12 the conspiracy. That is an essential element.

13 I go on and I propose to charge, "If you
14 conclude that a conspiracy as charged did exist, then
15 you must next determine whether the defendant Roemer
16 was a member, that is, whether he knowingly and wilfully
17 associated himself with the conspiracy. In making this
18 determination you should consider all of the evidence
19 in the case."

20 Then I define knowingly and wilfully.

21 Then I say, "Members of the jury, a mere
22 association of the defendant with an alleged conspirator
23 or mere knowledge of the conspiracy does not alone
24 establish participation in the conspiracy if you find
25 that a conspiract existed. In determining whether the

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defendant was a member of the conspiracy, you are to consider whether in some sense he promoted the venture and some stake in its outcome."

So I don't think that this requested instruction is proper, nor do I think that it is sound in the respect of payments made to Mr. Roemer with the intent of keeping him honest.

I don't believe that anybody can give money to a government employee in connection with his official duties, that is, a person dealing with a government employee in the course of his official duties, he cannot innocently ever give him any money.

Giving a government employee money in and of itself introduces a corrupting, improper and undue influence, and if that is what happened here and there was a conspiracy with that as its object, I believe the defendant would be guilty. That is for the jury to say and I charge only on general principles.

Moreover, this business about an offense which takes two people to commit, like we talked about bribery, that is not involved here. There is no substantive offense charged. There is simply conspiracy to defraud the United States by interfering and obstructing with the lawful carrying out of governmental

gtjw 4

functions by introducing a corrupting influence and the payment of money is a corrupting influence whether, as Judge Maton claimed all of his decisions were one thousand percent correct, certified by John Marshal himself or not.

Mr. Clerk, would you mark this as a court's exhibit, this last request.

(Court's Exhibit No. 5 was marked for identification)

THE COURT: So I won't give that.

Do we have a jury in?

THE CLERK: Yes.

THE COURT: All right. Are we all set?

MR. HOFFINGER: Yes.

THE COURT: All right. Get the jury.

MR. HOFFINGER: Your Honor, keeping in mind that you wanted me to keep as low or as close as possible to an hour, an hour and a quarter, you remember your Honor said an hour and a half at the outside, would your Honor be able to give me some indication of when an hour is up so that I can --

THE COURT: Yes, I will be glad to.

MR. HOFFINGER: Thank you, Judge.

I didn't realize the clock was up here.

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THE COURT: You get carried away. I have done this before.

MR. HOFFINGER: I think I can do it under an hour and a quarter.

THE COURT: If it doesn't bother you if I interrupt you, I will just say, "Mr. Hoffinger, for your information, you have been speaking an hour."

MR. HOFFINGER: Would you say "You asked me to remind you"?

THE COURT: All right, I will do that.

MR. HOFFINGER: Thank you, Judge.

(Jury present)

THE COURT: Good morning, members of the jury.

Madam Foreman, ladies and gentlemen of the jury, you remember that on Monday we completed the taking of evidence in this case and now we have reached the stage in the trial when counsel make their closing arguments in summation.

As I indicated, the fact that the government has the burden of proof influences the order in which counsel speak. The defendant at this point, through his counsel, addressed the jury first, to be followed finally by the government.

Mr. Hoffinger, will you address the jury.

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2 MR. HOFFINGER: Thank you, your Honor.

3 May it please the Court, Mr. Wohl, associate
4 counsel, ladies and gentlemen of the jury.

5 At the outset I would like to thank you for
6 the patience you have shown throughout this sometimes
7 hectic trial. I will ask for your patience for just
8 a little while longer until we are concluded with sum-
9 mations.

10 Mr. Roemer is charged with conspiring to defraud
11 the United States by agreeing to accept and by accepting
12 cash kickbacks from Morton Penn in New York City. The
13 amount of the kickbacks contained in the documents totaled
14 approximately \$13,000 and they range from July of 1962
15 through July of 1965.

16 Now, the law requires the prosecution to
17 prove that charge beyond a reasonable doubt, otherwise
18 you must acquit Mr. Roemer.

19 It is very difficult to prove a negative,
20 namely, that no agreement existed and that no cash
21 payments were ever made. That is one of the conditions
22 that the law does not require Mr. Roemer or any defendant
23 to prove anything, much less his innocence.

24 But in the instant case, there are unique
25 circumstances which point unmistakably to Mr. Roemer's

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innocence which I submit give rise to a reasonable doubt concerning his guilt.

Now, Mr. Roemer is charged with agreeing to accept payments from Mr. Penn so that Mr. Roemer's judgment might be influenced or, as Mr. Wohl put it in his opening statement, to forestall the possibility that Martin Roemer would stop orders coming through from Joe Jones.

But Mr. Roemer's conduct is innocent with any such agreement to defraud. The evidence is unmistakably clear that he fought Morton Penn and Joe Jones whenever he thought that he could get a better price of quality for the PX system, and that he kept pressing for an investigation because he felt that there was something going on between Joe Jones and Penn because Joe Jones was not getting the best price or the best quality for the PX system.

Now, that evidence comes from the last three witnesses in this case, whose integrity is beyond my question. I refer to Mr. Cox, Mr. Gilhooly and Mr. LaMarca, all of whom testified that Mr. Roemer's reputation for integrity was outstanding.

Now, Mr. Cox, the first witness, testified that from 1962 through 1966, the times in question, he had

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six sections under his control and that Martin Roemer was in charge of one of those sections, the electronics division.

He testified that Martin Roemer fought Morton Penn and Joe Jones on a number of occasions. He specifically recalled the following:

He recalled Toshiba in the early '60s, Westinghouse in 1962 and 1963, Children's Records in 1964 and Scott records in early 1965.

Now, on the Children's Records, Mr. Cox recalled that Martin Roemer finally bought them at considerable savings. On the Scott Records -- do you remember the Scott Records? The Scott Records, an order had been put through from Europe by Joe Jones for 100,000 records at \$1.20 for a normal and \$1.40 for the stereo from a specific jobber called Scott, 100,000 ranging from \$1.20 to \$1.40 a record.

Mr. Penn, you will remember, acknowledged in his testimony that he represented Scott, so there is no question that Scott was a client of Penn's and that Joe Jones was putting through an order at \$1.20 to \$1.40 a record for 100,000 records.

What did Mr. Cox tell you? Mr. Cox testified that Roemer found out that Scott had purchased 400,000

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records at 75 cents a record and Martin Roemer then proceeded to renegotiate the price with Scott records and reduce it to \$1 a record rather than the \$1.20 to \$1.40 that Joe Jones had agreed to and specifically ordered them at. That savings alone to the PX system ranged between 20 to \$40,000 for that one specific order.

What is more, Roemer went on to notify the other Exchanges that Scott, Penn's client, still had 300,000 records available and that those Exchanges ought not to pay more than \$1 a record, thereby forestalling the possibility that other Exchanges might buy at the price that Joe Jones had originally put through but that Martin Roemer had been able to reduce.

Mr. Cox also testified -- and this is critical -- that Martin Roemer told him, Mr. Cox, his group chief, that he did not trust Morton Penn, that he felt that Morton Penn and Joe Jones had something going between them because of the high cost of certain merchandise that Jones was trying to put through.

Mr. Cox testified that he and Martin Roemer complained to Mr. John Gilhooly, their chief, and to Col. Rahn, who was above that, and Col. Rahn said he would pass it on.

Now, the second witness was Mr. Gilhooly.

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Mr. Gilhooly was a lieutenant colonel in the Reserve, deputy chief of the PX system covering six states. He became chief of procurement in November of 1962.

Now, November of 1962 is a very important date, because according to Mr. Penn he was already paying Mr. Roemer as of July 1962.

Now, Mr. Gilhooly became chief of procurement in November of 1962, which is four or five months later.

He testified that he became chief of procurement in November of 1962 and that within the next two year period he recalled two specific orders that Roemer fought Jones on, Scott Records and Westinghouse, the same two that Mr. Cox had testified to. He remembered that the Scott order cost in excess of \$100,000 and that the Westinghouse order was substantial as well.

Now, he testified -- this is Mr. Gilhooly -- that on the Scott records Mr. Roemer succeeded in reducing the price that Mr. Joe Jones had originally agreed upon. Martin Roemer got the records at a lower price.

He also testified that the orders being put through by Joe Jones were such that he, Martin Roemer, felt that Morton Penn -- and now I am using the words of Mr. Gilhooly -- had a "undue influence" on Joe Jones.

Do you remember that testimony when he said --

1 gtjw 11

2 he used the words, somewhat tactfully, undue influence on
3 Joe Jones?

4 On cross examination he then used the phrase,
5 and this was a tactful phrase, that Martin Roemer felt
6 that there was an inordinate relationship between Joe
7 Jones and Morton Penn, to which Judge Wyatt asked, "He
8 told you, in substance, or in words, that he felt Penn
9 was paying Jones money as a bribe or a kickback," to
10 which Mr. Gilhooly said, "Yes, sir."

11 That was a question put to him very simply
12 and answered very simply. But you remember the tactful
13 words that Mr. Gilhooly used that Mr. Roemer felt that
14 there was an inordinate relationship because of the kind
15 of orders that were coming through from Joe Jones. They
16 were not the best price and they were not the best quality.

17 Now, what else did Mr. Gilhooly testify to?
18 Mr. Gilhooly testified that he passed on Martin Roemer's
19 suspicion to Mr. Gilhooly's superiors. Mr. Gilhooly
20 passed on those suspicions to his own superiors as Martin
21 Roemer expected him to and as Martin Roemer was aware
22 that he would. Martin Roemer was calling for an investi-
23 gation.

24 The third witness was Mr. LaMarca. Now, Mr.
25 LaMarca, you will recall, was an attorney who started

1 gtjw 12

2 law school in September of 1964 while he was working for
3 the PX system. He began working closely with Martin
4 Roemer around the time that Mr. Roemer went to Europe,
5 which was about April of 1964.

6 He testified that Roemer told him that he
7 thought Penn was dishonest and that Martin Roemer felt
8 that Penn and Joe Jones were working together. Not only
9 did he tell that to Mr. LaMarca, his partner, but Martin
10 Roemer told it to Mr. Cox, says Mr. LaMarca, and to Col.
11 John Latella, general counsel of the Exchange Service.

12 Mr. LaMarca made it plain that Martin Roemer
13 fought Joe Jones and that the name of Penn was brought
14 up by Martin Roemer in connection with his fighting Jones.

15 On cross examination Mr. LaMarca explained
16 that the basis for Martin Roemer's suspicions about Penn
17 and Jones working together was more than just because
18 Penn and Joe Jones appeared to be friendly, it was because
19 Jones was buying at a price that Roemer felt was too high.

20 Mr. LaMarca remembered one specific order
21 involving what LaMarca described as the most direct con-
22 frontation we ever had. Joe Jones, he said, was in on a
23 trip and Martin Roemer was making a strong attempt to have
24 Joe Jones reconsider that particular order. Joe Jones
25 refused. The matter was brought to the front office.

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There were cables back and forth between Europe and New York.

Mr. LaMarca couldn't remember what order that was, except that it was sizeable and it was either in electronics or in records.

Mr. LaMarca placed this confrontation in 1964, "Soon after I started working with Mr. Roemer," probably a matter of months after he started working with Mr. Roemer he said at another point.

Does it offend your common sense if I were to suggest that he was talking either about Scott Records, which Mr. Gilhooly placed in mid-1964, or Westinghouse, which occurred in that same time period which Mr. Gilhooly described as sometime after November of 1962?

In any event, in connection with the complaint to Col. Latella, Martin Roemer pressed Col. Latella about investigating the charges that he was marking, and according to Mr. LaMarca Col. Latella said, " Things were being done, but it was a question of getting the facts."

Now, the testimony of these three witnesses stand uncontradicted. The integrity of these three witnesses beyond reproach or question. Their testimony makes it clear that Mr. Roemer fought Jones and Penn consistently and persistently and just as consistently and persistently

1 gtjw 14

2 Roemer except blowing the whistle on what he suspected
3 was an illicit arrangement between Joe Jones and Morton
4 Penn because of the way the orders were coming through.

5 Now, if Martin Roemer was taking money from
6 Mr. Penn, would have he blowing the whistle and pressing
7 for an investigation? Why would he be killing the goose
8 laying the Golden Egg? Why would he try to start an
9 investigation that could catch him in the act of receiving
10 money from Mr. Penn if he were receiving money? Or in
11 the act of visiting Mr. Penn's office, as has been
12 suggested here?

13 In contrast to the testimony of these three
14 witnesses, what do we have on the other side? We have
15 Mr. Penn and his two secretaries, all of whom were cheat-
16 ing on their income taxes.

17 Let us deal with the two secretaries first.

18 Each of the secretaries says that each recalled
19 Mr. Roemer coming to Mr. Penn's office. Chrystal Vorwitt
20 said it was three or four times. Amy Dunn said Mr. Roemer
21 came once with a coat, although neither one of them ever
22 had a conversation with Mr. Roemer.

23 Each of them proceed to pick out a photograph
24 of Mr. Roemer. Now, to pick out a photograph of someone
25 in a situation like this takes quite a memory.

gtjw 15

In Amy Dunn's case, she picked out a photograph of a man she claimed to have seen only once, fleetingly as he came into the office nine or more years ago. But this memory appears to be reserved for Mr. Roemer only. Amy Dunn couldn't remember what she was being paid.

I would like to read to you just a portion of her testimony about her salary.

I am reading from page 99.

My question is, "What was your salary in Europe?"

"I can't remember.

"Was it the same as your salary in New York?"

"I was getting paid in marks in Europe and I just can't remember.

"When you came to New York, in your American salary -- was it about the equivalent of what you were getting in Germany?"

There was an objection.

"Did you get a salary increase as far as you were concerned when you came to New York?"

"I can't remember.

"How much were you being paid in New York?"

"I really can't remember that, but I think it was about \$100 a week."

Now, Chrystal Vorwitt's memory about her salary,

1 gtjw 16

2 that was the other secretary, was even more interesting.
3 She told us she worked in the New York office from 1962
4 through 1965 and that she was paid by ISSE up until June
5 of 1963. After June of 1963, she said, she was employed
6 by Uris in New York and that she was receiving \$125 a
7 week gross from Uris in New York. She kept insisting that
8 she was receiving \$125 a week gross, but she never could
9 recall what her take-home pay was.

10 Now, you may recall that I kept badgering
11 her and perhaps some of you became sympathetic to her
12 and quite unsympathetic to me, but if so I beg your
13 pardon.

14 But there was something that didn't make any
15 sense. Her insistence that she made \$125 a week gross
16 but couldn't remember her take-home pay left just some-
17 thing that was bothersome. In any event, after a while
18 she changed her mind about what her salary was. She
19 said she was getting \$85 a week gross, but she still
20 couldn't remember what her take-home pay was. I am talk-
21 ing about from June of 1963 on, when she said she was
22 being paid by Uris, as, indeed, she was. But she still
23 couldn't remember what her take-home pay was.

24 Now, salary and take-home pay is something
25 that should have been remembered, and the face of someone

gtjw 17

who they never spoke to is something that could not be remembered.

Now, it is fairly obvious that they were testifying to support Mr. Penn. He had testified in the Mary Tickman Jones lawsuit from 1963 through 1965 that he had nothing to do with ISSE. He also testified that Chrystal Vorwitt was working for Uris since June of 1963, as Chrystal Vorwitt stated here, but that she was being paid a Uris check in the amount of \$67.

Both Chrystal Vorwitt and Amy Dunn testified for Penn in that lawsuit. You will recall that Amy Dunn went so far as to testify in that lawsuit that she didn't know who was in charge of ISSE in New York, and she testified in that lawsuit in April of 1965, three years after she was hired by Mr. Penn. Now, by April of 1965 she had been working in that office -- I beg your pardon, she had been working for ISSE in New York for at least two years.

You remember she was hired by Penn three years earlier, she went to Europe for a year, came back and worked here for two years, all hired by Mr. Penn, paid by Mr. Penn, and she said by April of 1965 she had been working for ISSE in New York for at least two years and she said she didn't know who was in charge of ISSE in New

1 gtjw 18

2 York.

3 Well, who did she think was in charge of ISSE
4 in New York, Chrystal Vorwitt?

5 Now, it is clear that she lied for Morty Penn
6 then and now and so did Chrystal Vorwitt. She was obvious-
7 ly trying to keep Morton Penn separated as much as she
8 could from ISSE the way Morton Penn did when he was
9 testifying in that same lawsuit. She supported him then,
10 she supports him now.

11 Now, picking out Mr. Roemer's photograph is
12 not as difficult as it appears. Obviously Penn knew what
13 Marty Roemer looked like. He had seen Martin Roemer
14 quite clearly in Mr. Cox' office in connection with that
15 Tobshiba deal.

16 Do you remember the Tobshiba deal, where Morton
17 Penn himself acknowledged that Martin Roemer had told
18 him that there was something wrong? That Tobshiba was
19 a problem. Mr. Penn described it as a legal problem,
20 Mr. Cox did not. There was no legal problem, there was
21 a problem whether the merchandise was worth the money.

22 Do you remember what Mr. Cox testified, he
23 asked for samples and so on?

24 In any event, one thing is clear, Penn did
25 have at least one good long occasion to see and talk to

gtjw 19

Martin Roemer at the PX system, and it was obvious what Martin Roemer looked like. I am sure that Martin Roemer's face from that occasion alone was etched in Morton Penn's memory because of what Roemer did to him on the Toshiba deal.

Now, all he had to do, he, Morton Penn, had to do was to describe Roemer to Amy Dunn and Chrystal Vorwitt, either then or later on in 1969, when Penn decided to become a government witness so that they could support his testimony.

Roemer was the guy with the moustache and the horn-rimmed glasses and he was about 35 to 40 years old.

Now, I ask you to look at these photographs.

You will notice in the photographs that out of all of them, there are only two people with a moustache and glasses, only two, these two.

Now, if I were to tell you that Martin Roemer had a moustache and horn-rimmed glasses and was about 35 to 40, which of the two would you pick out? This one or this one? (Indicating)

The other person is a little too young to be Mr. Martin Roemer.

Let me ask you this question:

Would Martin Roemer, while he was blowing the

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whistle on Morton Penn and Joe Jones, as he was at the PX, would he be showing his face at Morton Penn's office so clearly that two secretaries could identify him twelve or thirteen years later or even nine or ten years later? Does that sit right with you?

Now, their memory, that is the memory of these two secretaries, for a face -- and that's what I call their convenient memory for a face -- is matched only by Morton Penn's memory of a house he claims to have visited twelve or thirteen years earlier on one occasion.

Do you remember how Mr. Penn described how he went to that house once and how Joe Jones gave him, Morton Penn, directions on how to get there? Based on that he claimed that he could remember the street and how to get there.

Do you remember Mr. LaMarca's testimony? Mr. LaMarca had been to Mr. Roemer's house on a number of occasions. He couldn't remember the street. Do you think that you could remember how to get somewhere in New Jersey if you had been there only once twelve or thirteen years earlier and someone else had to give you directions? Would you remember how to get there and remember the name of the street?

That is not just a convenient memory, that is

gtjw 21

an incredible memory.

It is the same memory, by the way, which fails to remember how much money he made in any one year at ISSE, how much commissions he made in any one year at ISSE, how much money was deposited in a Swiss bank account -- he couldn't remember that. Mr. Penn couldn't remember how much money he was stealing from the government. He couldn't remember, either, when or where he was supposed to have made any of the payments to Mr. Roemer. He knew vaguely where and generally, but not any one specific place. For that, the payments, when, where, how much, he relied entirely on his documents. And we have Mr. Penn's word under oath that his documents are authentic.

Now, those documents, those pieces of paper, are supposed to be records of what he was telling Mintz. He was telling Mintz, he says, that he was actually paying Martin Roemer cash. The question is, was Mr. Penn telling Mr. Mintz the truth? Was he really paying out the way the documents say?

Let's go back a few years to 1969, when Mr. Penn's attorney goes to Washington and he returns with a deal for Mr. Penn. Now, what is the deal? Mr. Penn will become a government witness and testify against the buyers whose names appear in code in the documents seized

gtjw 22

by the German government. In return Mr. Penn will receive immunity from criminal tax evasion and immunity from any false testimony he might have given in 1968 to the IRS. His civil tax liability, civil, will, however, remain open. In other words, the amount he owes the government civilly will remain open.

But in order to get this deal, what does Mr. Penn have to do? Well, Mr. Penn has to insist that the payments reflected in the documents were, in fact, made by him, otherwise he has nothing to trade. He has to trade bodies for himself, otherwise why would the government, or anyone, give him a deal?

The government wouldn't give him immunity for so much tax evasion unless he could trade off other bodies so that he could claim, "Well, I'm getting away with it, but look what I am getting for you."

So he has to stand behind those documents. If he admitted or ever admits that he did not pay Mr. Roemer, one of the people mentioned in those documents, or if he admitted that he hadn't paid anyone else that was mentioned in those documents, the documents will become invalid. It is either all or nothing, and that's obvious.

In other words, if he were to admit that of

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2 of fifteen names on the document he hadn't paid, in fact,
3 one or two that he was lying to Mr. Mintz, he would fall
4 into the trap of being asked, "Well, how do we know that
5 you paid the others if you didn't pay so and so and so
6 and so?"

7 He has to stand behind them all. He has to
8 insist that whatever he was telling Mr. Mintz in those
9 documents as to cash payments were all, in fact, true,
10 that he only put in the documents what he paid out.

11 So in 1969 he gets locked in. Mr. Penn gets
12 locked into the documents and he gets locked into the
13 story that all the people mentioned in the documents
14 were, in fact, being paid in cash out of the funds that
15 he and Mr. Mintz were sharing in, namely, those ISSE
16 funds.

17 Not only does he get immunity from criminal
18 prosecution by sticking to that story, he gets something
19 else. He gets a crack at reducing his civil tax liability
20 as well, because everyone knows expenses reduce taxes,
21 and as Mr. Penn testified here his civil tax liability
22 question remains open until he finishes testifying against
23 the buyers.

24 Now let's take a look at the documents.

25 It has not become clear, despite all of the

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2 efforts of Mr. Penn and Chrystal Vorwitt, that Morton Penn
3 was cheating Mintz on the salary for Chrystal Vorwitt.

4 Chrystal Vorwitt testified that she started
5 working for Uris in New York in June of 1963. Penn
6 testified the same way in the Mary Tickman Jones lawsuit,
7 that she started working for Uris in June of 1963. In
8 fact, he referred to a check, a Uris check that she was
9 paid in June of 1963. Nevertheless, from June of 1963
10 until April of 1965, Penn was telling Mintz in those
11 documents that Chrystal Vorwitt was getting \$110 a week
12 from ISSE.

13 Look at the exhibits. In each one of the
14 exhibits you have the name Chrystal Vorwitt appearing as
15 being paid \$110 a week. She is getting \$110 a week -rom
16 ISSE from June of 1963 through the end of 1964. Some
17 of these documents record that Roemer is getting cash
18 payments as well.

19 Now, these are the exhibits. For example,
20 Governmetn's Exhibit 6 in which it says paid to MR on
21 account, \$2500, which Mr. Penn insists he did pay to Mr.
22 Roemer, on that document, which is a document dated August
23 6, 1973, you have CV, which is Chrystal Vorwitt, salary
24 \$110 week ending July 12, July 19, July 26, August 2nd.
25 \$110 a week from ISSE. Chrystal Vorwitt made it very

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plain from June 1963 on she was being paid by Uris and there were Uris checks.

Not is it only the document of August 6, 1963. Look at the document of September 16, 1963. Look at how many times Chrystal Vorwitt's name appears there. She is being paid \$110 a week every single week, says Mr. Penn in this document, \$110 a week out of ISSE, the same way he says he is paying Mr. Roemer.

Look at this, Defendant's H, in December of 1963, November 15, November 22, November 28, December 6 of 1963, Chrystal Vorwitt out of ISSE.

Look at Government's Exhibit 9, look at how many times Chrystal Vorwitt's name appears, every week \$110 a week.

Look at Defendant's Exhibit G, this is now December of 1964, almost a year and a half after she started working for Uris and she is being paid by Uris, as she insisted, and as the checks demonstrated, she is being paid \$110 a week out of isSE.

Was she being paid \$110 out of ISSE as Mr. Penn was telling Mr. Mintz? Well, it is quite clear that she couldn't be getting \$110 from ISSE when she was being paid by Uris.

Now, Amy Dunn described the process in her

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letter to Fritz Mintz of August 5, 1965, and I read to you from the records.

This is from page 107. I asked the Court if I could read something to her and this is the sentence I read to her.

I said, "Do you remember writing this," referring to the letter of August 5, 1965. She is writing to Fritz Mintz.

"Do you remember writing this, 'As you know which you stated, Chrystal has been working for Uris rather than ISSE exclusively since I returned to New York, which was October 1963. All this time she was being paid by Uris Sales Corporation \$85 a week which is \$70 per week net after taxes. She would then turn this \$70 over to Morton Penn, who, in turn, would give her \$110 ISSE money, of course, and put the \$70 in his picket. It is sort of like him stealing his own money.'"

Well, of course. I mean, in a sense that you can't steal from a partner maybe he was stealing his own money, but what was he doing? He was pocketing the \$70 a week. What he was doing was, she was being paid to work for Uris, and she was working for Uris, as Amy Dunn made clear and as Chrystal Vorwitt made clear, she was working for Mr. Koppel, who worked for Uris, she was

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2 working for Uris, but you see, Mr. Mintz didn't know
3 that then. Soe what Penn was doing was Penn didn't tell
4 Mr. Mintz that he had put Chrystal Vorwitt to work at
5 Uris, Chrystal Vorwitt had come from Europe and worked
6 for ISSE -- I beg your pardon, she had started in New
7 York working for ISSE until June of 1963 and then Penn
8 switched her over to Uris, but never told Mr. Mintz.

9 Do you remember Chrystal Vorwitt testified
10 she changed offices and started working for Mr. Koppel?
11 He never tells this to Mr. Mintz. Instead, what he
12 does is he just takes the \$70 and pockets it. He should
13 have been charging ISSE \$40 a week, instead he is charging
14 ISSE \$110.

15 Now, that \$70 a week alone from June of 1963
16 to April of 1965 amounts to about seven or \$8,000 which
17 he was putting -- he, Penn, was putting into his own
18 pocket but telling Mintz in those documents that he was
19 paying \$110.

20 Now, if he could put that kind of money in his
21 pocket, why should he hesitate to put any other money
22 in his pocket, even though he was telling Mintz that he
23 was paying it out?

24 The documents are not valid and Penn misled
25 the government in 1969 about those documents.

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This isn't the only thing he misled the government about in 1969. Mary Tickman Jones was a fifth percent shareholder in the Uris Corporation. Mr. Penn admitted that he never told her that he was taking their Uris clients and putting them into a partnership with Fritz Mintz, the clients which belonged to Uris which they were 50/50 shareholders in. He just took them and started a new business with someone else and cut her out.

Now, when she sued him in April of 1963, Mr. Penn testified for the next two years that he had not incorporated ISSE, that he had no interest in ISSE, that he derived no profit from ISSE and that Dr. Batliner -- did you ever hear that name before? -- Dr. Batliner was the sole owner of ISSE.

Now, all of this was perjury. And Morton Penn ultimately admitted it on cross examination. It wasn't perjury on one occasion, it was perjury that was repeated over and over again from 1963 through 1965, for two -- well, it is a three-year period, 1963, 1964, 1965. He testified over and over again to the point where you will recall it seemed as if maybe he was on trial. Do you remember how much there was of that perjury?

That perjury occurred in this very court. He was testifying in the Southern District Court, right

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here. He perjured himself in addition before a special master in connection with damages. He perjured himself over and over again.

Now, why is his perjury in that lawsuit important? After all, we know Mr. Penn is a perjurer. There is no question about that. That perjury stands out for a very special reason. You will recall that his deal with the government immunizes him from criminal tax prosecution and from false statements made at the IRS. There is no mention of any perjury committed in that Mary Tickman Jones lawsuit; nothing. Why? It's obvious. He never told the government about it. He never told them that he committed perjury for three years running, from 1963 through 1965, in connection with a partner who was suing him.

Had he told the government about that perjury, do you think that two assistant United States attorneys would have stood by when he testified for them in a civil lawsuit in California in 1972 that he was the sole owner of Uris and that Mary Tickman Jones had been a partner of his in a manufacturing plant in North Carolina which ended before he ever went into ISSE? Do you think they would have stood by?

Do you remember when I asked, "Didn't the

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2 U.S. Attorney stand up and say you just committed perjury?"

3 Do you think two assistant U.S. attorneys
4 would have stood by in 1972, when they heard him testify
5 that he was the sole owner of Uris and that his partner-
6 ship with Mary Tickman Jones in a North Carolina manu-
7 facturing plant had ended before he went into ISSE? They
8 didn't know about it because he never told them about it.

9 But why didn't he tell the government about
10 it? 1969? Why didn't he tell them about his perjury
11 in the Mary Tickman Jones lawsuit? Couldn't he have gotten
12 immunity for it?

13 Well, the reason he didn't tell the government
14 about it was that he was afraid in 1969 that if he told
15 them that he spent two years -- three years. I keep saying
16 two. 1963, 1964, 1965 makes three, doesn't it?

17 If he told them that he had spent three years
18 perjuring himself in order to steal from Mrs. Mary Tickman
19 Jones, a woman who was his fifty percent partner in Uris,
20 he might never have gotten the deal in 1969. Why? Be-
21 cause in 1969 he had to convince the government that he
22 hadn't stolen from Fritz Mintz and he had to convince
23 them that he hadn't stolen from Fritz Mintz at the very
24 same time that he was perjuring himself in connection
25 with Mary Tickman Jones, because 1963, 1964 and 1965 are

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2 the very same years we are talking about. It all happened
3 at the same time.

4 He was afraid that if he told the government
5 in 1969 of the extent of his deceit and perjury in con-
6 nection with Mrs. Mary Tickman Jones from 1963 to 1965,
7 that they wouldn't take a chance on his story that he
8 wasn't doing the same thing with Fritz Mintz. After
9 all, with Fritz Mintz he had substantial sums of cash
10 in his hands. He had known Fritz Mintz for only two
11 weeks. You will recall that Mintz and he had both accused
12 each other of stealing.

13 Now, at first Morton Penn denied that Fritz
14 Mintz had accused him. I would like to just read that
15 at page 69. He testified in this trial, "He indicated
16 that he was spending varied amounts of money in excess
17 of what they should be, but he never referred to the fact
18 that I was stealing."

19 That is what he testified to at this
20 trial, "Never referred to the fact that I was stealing."

21 But then he was reminded of something later
22 on. This is at page 61 of GT/mg.

23 This is a question I put to him after he had
24 testified that he never referred to the fact that he was
25 stealing. I referred him to his testimony in 1972 when

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2 he testified for the government in another civil trial,
3 in which he said the following:

4 "Q Also is it not a fact that you have
5 accused each other of stealing money from each other?
6 Isn't that so?

7 "A No question about it.

8 "Q You don't rally know for a fact that
9 moneies he says he paid to Couzen or Salt was
10 not money that he took for himself. " he being Fritz Mintz.

11 "A It could have gone into his pocket.
12 As a matter of fact, that 6,000 has me very curious.

13 "Q He has accused you of the same thing,
14 hasn't he?

15 "A Yes, but he wouldn't face up to me.
16 He is accusing me of the same thing, but he won't face up
17 to me."

18 He testified here he never accused him. He
19 testified in 1972 that Mintz accused Penn of the very
20 same thing. What was the very same thing? Penn was
21 accusing Mintz that he was not making the payoffs that
22 Mintz claimed he was making and Mintz accused Penn of the
23 very same thing.

24 Now, one of the questions that might arise
25 here is, if Roemer was not satisfying Joe Jones and filling

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every order, how come Mintz continued to think that Roemer should be paid, especially if Joe Jones is a partner of Mintz'?

Well, Penn had a very interesting story. His story was that Joe Jones told him, Morton Penn, that Roemer wasn't earning the money that he was getting and that he should be cut off. Penn claimed he told this to Roemer and that Roemer said, in essence, "Okay, but me off."

Now, we don't know what Morton Penn was telling his partner Mintz. Mintz never came to New York City. He had no contact with Martin Roemer. And we have only the word of Mr. Penn that Joe Jones and Fritz Mintz were partners.

Do you remember there was that weird set up about the bank accounts, the Swiss accounts? They were 50/50 partners. When I asked Mr. Penn if they were partners, how much was Mr. Jones getting, he said, "I don't know, but Mr. Jones and Mr. Mintz were very close."

Now, he says, as I say, we have the word of Mr. Penn that Joe Jones and Fritz Mintz were partners, but obviously Joe Jones wouldn't discuss payoffs with Roemer. If he did, why would Mr. Penn be handling the payoffs?

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2 Mr. Penn's story is inconsistent with Mr. Jones
3 being involved in any way, shape or fashion with any
4 payoffs supposedly going to Mr. Roemer. Jones was a
5 buyer who was getting paid either by Fritz Mintz or Morton
6 Penn, we don't know which. We do know that Penn wants
7 to believe that everything was Mintz' idea. The corpora-
8 tions, the Swiss bank accounts, the payoffs, everything
9 was Mintz' idea. That is what Mr. Penn says.

10 Now, we know that Penn -- and these are not
11 my words, these are the words of a witness -- was a slimier
12 character as any partner could have and he could concoct
13 stories. Anyone who could concoct the scheme that he
14 told you about about all those foreign corporations and
15 the Swiss coded accounts could easily deceive any partner
16 that he might have, whether it be Fritz Mintz, Mary Tickman
17 Jones or anyone else.

18 Do you remember the story he made up about
19 Toshiba, the fact that there was a legal question involved?
20 Do you think he was telling Mintz that whenever orders
21 were being held up that there were legal questions. Who
22 knows?

23 Besides, remember that there were lots of good
24 orders that were coming through and good orders could not
25 be stopped. Remember, Penn represented companies like Sony,

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Arrow Shirts, Capitol Records, MGM Records. You remember what Mr. LaMarca testified, you remember what Mr. Gilhooly testified, virtually every first grade manufacturer had a manufacturer's rep and if the orders were good, well, then, they could go through, if they were a good value and a good price.

Now, Penn could have told any number of stories to Fritz Mintz. What is interesting is the story that he tells us here. At no time does he ever suggest that Roemer earned the money that he, Mr. Penn, claimed he was paying. Indeed, he never even attributes a conversation to Roemer as to what Roemer was supposed to do for the money. The only conversation he attributes to Roemer is the time when Penn says that Jones told him that Roemer wasn't earning his keep and he, in pen., supposedly tells this to Mr. Roemer.

Doesn't that strike you as odd? The fact is that Mr. Penn is conceding that Roemer didn't do anything for the money that he was giving him.

Mr. Penn said he was paying Mr. Roemer from 1962 through 1965, and yet Mr. Penn never says what Mr. Roemer was doing for these three years to earn his money.

What Mr. Roemer was doing was quite clear.

The three witnesses, Mr. Cox, Mr. Gilhooly and Mr. LaMarca,

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2 told you what he was doing for the PX. He was fighting
3 Joe Jones and Morton Penn whenever and wherever the price
4 wasn't right and Penn knew it. That's why he concocts
5 the story he does that Mr. Roemer was doing nothing for
6 the money.

7 What Mr. Penn didn't know, however, was that
8 Mr. Roemer was doing something else, that Mr. Roemer
9 was blowing the whistle, and neither could Mr. Jones
10 have known that. That is not something that either
11 Col. Rahn or Mr. Gilhooly or anyone else would have
12 told Joe Jones or anyone else outside of the PX system.

13 Had Morton Penn ever learned that at that
14 time, that Roemer was blowing the whistle on him, I do
15 not believe that he would have had the nerve, and he has
16 lots of nerve, to try to sell Fritz Mintz or anyone else,
17 including the government, on the proposition that Martin
18 Roemer was being paid off by him.

19 Now, Martin Roemern's statement to the FBI,
20 which was put into evidence, adds nothing to the govern-
21 ment's case. That statement is contained in written
22 form. You will recall it was dictated six days after
23 the questions were put to Mr. Roemer and the original
24 notes are gone.

25 You remember Morton Penn told us when I was

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2 was harassing him on cross examination about how the FBI
3 conducts their interviews, he said, "They ask specific
4 questions and they don't allow you to give them details."

5 Do you remember I showed him the document where
6 he made notations.

7 It should not surprise you that Roemer did not
8 tell the FBI agents about his suspicions concerning Penn.
9 He had no facts to go on and he was no longer with the
10 PX when he was questioned.

11 In fact, the FBI agent Hilly only asked if
12 Mr. Roemer had any dealings with Morton Penn, but Mr.
13 Roemer's dealings were not with Penn, they were with Joe
14 Jones. When I asked Special Agent Lee if Roemer was
15 asked anything other than what was contained in the report,
16 I was told no.

17 Now, the agents did not give Mr. Roemer that
18 report to read over, they didn't ask him to look at the
19 statement, to correct it or to add to it. All the state-
20 ment shows is that as far back as 1969 Mr. Roemer denied
21 that he was taking any money.

22 Now, I would like to go back to Mr. Penn
23 for a moment.

24 As I said earlier, it is quite clear that he
25 is now and continues to be a perjurer. Why else would

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2 the government specifically warn him not to commit
3 perjury?

4 In 1972, for example, he testified under
5 oath that he never evaded income taxes. That was in
6 1972, after he was a government witness. It was three
7 years after he received a warning not to commit perjury.
8 He testified that he never evaded income taxes.

9 Let me see if I can find it for you. Just
10 one minute.

11 I am reading from page 37, and I asked him
12 about his testimony on February 23, 1972.

13 "Q Have you ever evaded any income
14 tax?

15 "A No.

16 "Q Never?

17 "A No."

18 Those were the questions put to him in
19 February of 1972 in a civil trial and those were the
20 answers he gave three years after he promised the govern-
21 ment not to commit perjury.

22 At this trial here he did admit two pages
23 earlier that he did evade income taxes, as, indeed, he
24 did.

25 That wasn't the only perjury in 1972, three

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years after he promised the government to sin no more and to tell the truth.

You will recall that in 1972 he testified that he gave true statements to the IRS in 1968. You will remember that he had told the IRS in 1968 that he never made a payment to Martin Roemer.

Now, in 1968 he testified to the IRS, "I never made a payment to Roemer."

In 1969 he tells the FBI, "I did make a payment to Roemer."

In 1972 he testifies under oath that what he said in 1968 was the truth.

Today here he says that, "What I testified to in 1969 is the truth and what I said in 1968 and 1972 was not the truth."

Well, which of the two statements do you wish to accept? Which of the two statements is false and which is true? The two match up, '68 and '72 no payments; '69 and '74 payments.

Can you, in good conscience, accept the word of Morton Penn without having a reasonable doubt? Because this case depends --

THE COURT: Mr. Hoffinger, you asked me to interrupt you at an hour's passage and it is an hour.

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MR. HOFFINGER: Thank you, Judge.

This case depends on his word.

Would you take Morton Penn's word for anything important? Would you go into a partnership with Morton Penn and rely on him to give you a fair shake and an honest account of what he was spending? Would you let a friend of yours go into a partnership with him after what you know of Mr. Morton Penn?

As I said earlier, Mr. Penn made a deal in 1969 to deliver bodies to the government in return for immunity. He has delivered the body of Martin Roemer. He is now asking you to bury it.

Mr. Penn has already been pardoned for his past crimes. He has received immunity. Do you have to go any further and convict Mr. Roemer, a PX employee, of outstanding integrity so that Mr. Penn can go on and reduce his civil tax liability?

One of the critical questions you have to ask yourself is, does Mr. Penn have a motive to lie?

Well, as I think we have demonstrated, he had a motive to lie when he submitted the documents to Mr. Mintz. In fact, he did lie in those documents as we pointed out in the case of Chrystal Vorwitt. He had a motive to lie to the government in 1969 when he did not

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disclose his perjury in the Mary Tickman Jones case. He had a motive to lie in 1969 when he made a deal to testify against every buyer named in those documents, including Mr. Roemer. He has, in fact, lied since 1969, as we have demonstrated, despite his promise to the government not to lie. He is lying to you now for all the motives we have pointed out.

Can you in good conscience disregard all of these motives and say that Mr. Penn is reliable?

Remember, he cheated a partner named Mrs. Jones, a partner named Mintz. Now he wants to make you a partner in his effort to cheat the government out of taxes. Don't let him do that.

Don't forget what those three witnesses testified to, Mr. Cox, Mr. Gilhooly and Mr. LaMarca.

In closing I want to remind you, if I may, of one thing that came out in Mr. LaMarca's cross examination. On page 17 of his cross examination he was asked, "What happened to the purchase orders after Mr. Roemer acted on them in the normal course of events?"

And he answered, "They were usually put in an out box to have copies made and sent to the manufacturer for shipment."

"Q And then the manufacturer shipped the

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2 goods and the Exchange would pay for them?

3 "A That's right."

4 Now, what does that mean? It means that if
5 Martin Roemer had been taking kickbacks and not blowing
6 the whistle, if he had not been fighting Joe Jones and
7 Penn, those orders, all of them, would have gone through;
8 Scott, Westing house, the Children's Records, Toshiba.
9 All of them would have gone through and nobody would
10 have been the wiser.

11 He was not taking kickbacks. Mr. Roemer
12 took it upon himself to complain whenever he felt he
13 could do better for the PX system. It was only because
14 he was loyal to the PX system and would never think of
15 defrauding them that these confrontations occurred. Mr.
16 Roemer kept blowing the whistle in New York. Perhaps it
17 was finally heard in Europe.

18 Now, I have tried to answer what I believe
19 may be the pertinent questions in your mind. When I
20 sit down Mr. Wohl, the assistant U.S. attorney, will
21 stand up. Perhaps he can answer some of the questions
22 I have raised, perhaps he will raise other questions
23 which I have either forgotten or overlooked or in some
24 way neglected to answer. I am not permitted to stand
25 up after Mr. Wohl makes his final argument and answer

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what he says. He if raises any questions that I have in any way not answered, I would ask you to exercise you reason and intelligence and answer them for me.

I would like to thank you for your patience. I place Mr. Roemer in your hands and I am confident that justice will be done and that you will acquit Mr. Roemer.

Thank you.

THE COURT: Madam Foreman, ladies and gentlemen of the jury, I think it would be good if I gave you a chance to stretch your legs a little bit and we will take a few minutes break.

You may retire to the jury room.

(The jury left the courtroom)

THE COURT: All right. Suppose we take a few minutes recess.

(Recess)

(In open court in the absence of the jury)

THE COURT: Mr. Wohl, do you want me to remind you when an hour has passed?

MR. WOHL: I believe I will be able to keep track of it, your Honor.

THE COURT: All right.

(Jury present)

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2 THE COURT: All right, Mr. Wohl, will you
3 address the jury.

4 MR. WOHL: Thank you, your Honor.

5 Your Honor, counsel, Madam Foreman, ladies
6 and gentlemen of the jury.

7 As you now know, this case is a case about
8 corruption, about a governmental employee who worked for
9 the Military Exchange System who was taking money from
10 people from whom he was not supposed to accept any money,
11 people dealing with the PX system.

12 Ladies and gentlemen, this type of crime is
13 certainly one of the most secretive of all types of
14 crimes by its very nature. If you started out in this
15 case expecting that the government was going to call a
16 policeman who said that he witnessed a crime or was going
17 to call a particular victim to tell you about what occurred
18 at the scene of the crime or there was going to be a body,
19 of course you were very much surprised, because corruption,
20 that is, a conspiracy to defraud the United States, is
21 the type of thing which depends for its operation on
22 secrecy, which depends for its operation on the fact
23 that nobody even knows, ladies and gentlemen, that a
24 crime is even being committed. And once, in fact, the
25 crime is discovered, then that shows that the crime itself

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2 has been unsuccessful.

3 It is not like a bank robbery where everybody
4 knows that a crime is committed and the only problem is
5 then finding out who did it.

6 Now, ladies and gentlemen, oftentimes in a
7 fraud situation such as this the way you find the fraud
8 and the way you establish it is by putting together
9 things, pieces of information that nobody had ever
10 suspected would all be assembled in one room or in one
11 mind. That is what our system of justice allows you to
12 do, ladies and gentlemen, to come together in a trial
13 and bring for you various pieces of information and put
14 them all together so that you can see what the true
15 facts are. And the government submits to you that that
16 is exactly what has happened in this case and what you
17 have seen in this case are the three versions, the highly
18 different, extraordinarily different versions of Martin
19 Roemer. And when you recognize the differences among
20 those three versions, the conclusion that you are going
21 to come to is a conclusion of guilt.

22 What are those three versions?

23 There is the Martin Roemer, who is in a position
24 of trust, who is in a position where he is supposed to be
25 reviewing purchase orders and he is under an obligation not

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to deal with the people whose names are on those purchase orders or people having anything to do with them.

There is the Martin Roemer in that same version who is a veritable bloodhound against corruption, who is eager to sniff out any of the slightest aroma of corruption, ladies and gentlemen, and the possibility of a payoff and he is making accusations in that regard and he is anxious for investigations.

What else do you have, ladies and gentlemen? You have the Martin Roemer in 1968 who is a suspect and who was questioned by some agents of the FBI. Where is our bloodhound then, ladies and gentlemen, when he thinks that he may be a suspect? No more bloodhound. Now we have a man who has no idea whether there are any payoffs, who may have met this Morton Penn once, can't remember where or when, doesn't really know anything else about him, doesn't know anything about this company ISSE, he has vaguely heard the name and he certainly doesn't know anything about any payoffs, ladies and gentlemen.

And a recognition of the differences between those two versions, ladies and gentlemen, rapidly leads you to the third version of Martin Roemer that you have seen presented in this case, the man who surreptitiously, while he is complaining about the possibility of payoffs,

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is, in fact, taking unlawful payoffs.

I told you ladies and gentlemen at the beginning of this case that you were going to arrive at your conclusions by putting together the various pieces of evidence. You weren't going to see it all from one witness and you weren't going to see it all from one document, ladies and gentlemen, and that is exactly what the government submits you are going to have to do.

Lawyers oftentimes call their final speeches summations and so I would like at this time to summarize for you what the government submits has been established in this case.

Now, the first thing that was established, ladies and gentlemen, was that between 1962 and 1966 the defendant in this case was in a very significant position within the Army and Air Force PX system. And what was that position? That position was as a reviewer of purchase orders in large monetary amounts and in vast quantities that were coming across his desk and the desk of his subordinates from overseas to purchase goods through the Military Exchange System, and it was his responsibility to review those orders.

You have seen that he had two possible avenues. He could just approve the order or have his subordinates

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2 approve it without his checking it and then, ladies and
3 gentlemen, the order would just go ahead, the Exchange
4 would buy the goods and pay out the money to that manu-
5 facturer.

6 What was the other possibility, ladies and
7 gentlemen? The possibility was that he could question
8 the order. And evidence is clear that he could question
9 it for any number of reasons, many of which were rather
10 subjective. He could question it because he thought
11 there were other kinds of goods available, he could ques-
12 tion it because he thought that the particular model,
13 like the Westinghouse television set, didn't have any
14 consumer appeal. He could question it because he thought
15 that the records that were being offered or the other
16 goods being offered really weren't brand new, they were
17 old and they were remakes or something like that.

18 Mr. Cox also testified that sometimes legal
19 questions would come up and they would have to refer them
20 to their counsel.

21 It is clear from the evidence, ladies and
22 gentlemen, that if he questioned an order, one of two
23 things certainly occurred; one, the order was going to
24 be delayed for a considerable period of time and payment
25 was going to be delayed, and the second thing that would

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happen would possibly be that that order would never be approved at all.

It is clear, also, ladies and gentlemen, that his speciality was the electronics field. It is clear, also, that from time to time he did create some problems with respect to the orders that were transmitted through his office from Mr. Jones. He did question a certain number of orders. I believe there has been testimony of four orders possibly that he questioned over this four-year period.

But what other testimony was there, ladies and gentlemen, which you can not ignore just because it perhaps wasn't dwelt on at the time? But isn't it infinitely more significant that the testimony was that these orders coming from Mr. Jones were in massive quantities, they were multitude of orders and that the vast, vast, vast majority of them went through without any question by Mr. Roemer enabling Mr. Penn and Mr. Mintz to build up vast quantities of money in their Swiss bank accounts.

So, ladies and gentlemen, don't get the impression from this evidence that there were never any orders going through, because the evidence is clear that there were plenty of orders going through from Mr. Jones

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2 and occasionally one was questioned. Four were pointed
3 to in four years and the witnesses may even have said
4 there were some more. In fact, they did say there were
5 some others that they didn't remember, but there were
6 plenty of them that were not questioned.

7 And it is also clear, ladies and gentlemen,
8 that Martin Roemer when he functioned in this capacity
9 was under a duty, and his duty was not to accept any
10 money from manufacturers or manufacturer's representatives.
11 That was established beyond any doubt from the testimony
12 of my witness and also by the first two government's
13 exhibits which were put in evidence before you. They were
14 documents signed by Mr. Roemer, certificates of under-
15 standing.

16 I would like to read briefly from portions of
17 them.

18 They state, first of all, " That I am respon-
19 sible for protecting the interests of the government as
20 well as the Army and Air Force Exchange System and for
21 maintaining the reputation of the Army and Air Force
22 Exchange Service for honesty, courtesy and fair dealings.

23 "My conduct must be above reproach and suspicion
24 at all times and in all cases avoid a position of conflict
25 between self-interest and integrity."

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1 gtjw 51

2 Later on these documents, which are both in
3 substantially the same form, go into further detail.

4 "I will not accept a gratuity from any individual,
5 firm or corporation doing or seeking to do business with
6 the Army and Air Force Exchange Service. Gratuities may
7 include, but are not limited to, money, entertainment,
8 hotel bills, vacations or merchandise."

9 So it is very clear, ladies and gentlemen,
10 that everyone understands that Mr. Roemer is not
11 supposed to accept any form of such gratuities.

12 And the question, ladies and gentlemen, is
13 not whether he is going to do something for the manu-
14 facturer in return for it. The government is entitled,
15 and the evidence has clearly established, that the rule
16 was that you don't accept this money if you are going
17 to help the manufacturer out or even if you are fooling
18 the manufacturer and you are just taking his money be-
19 cause he thinks you are going to help him out and you
20 are not really going to help him out in the vernacular,
21 a shakedown type of situation. Either way, ladies and
22 gentlemen, he is not supposed to take the money and it
23 is clear.

24 The government submits that there has also been
25 substantial evidence, compelling evidence in this case

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2 that Mr. Roemer violated that trust, and I would like to
3 summarize for you what the government submits that evidence
4 has shown.

5 It has shown, first of all, that Mr. Jones
6 and Mr. Penn and Mr. Mintz realized at a very early stage
7 in their setting up their foreign operation that Mr.
8 Roemer was of critical significance because of his ability
9 to stop any orders. They recognized that he couldn't
10 initiate any orders, but he could be of disastrous
11 impact on their organization if he used his authority to
12 stop orders too frequently and, consequently, ladies and
13 gentlemen, they recognized that they had to ingratiate
14 themselves with Mr. Roemer.

15 So what happened?

16 First of all, there were social contacts.
17 Jones and Penn went out to Mr. Roemer's house and they
18 had some social discussion. At a bar they met with Mr.
19 Roemer and they had more social discussion and generally
20 indicated that they wanted to do business with the PX
21 system, but nothing about any payments.

22 Then you recall Mr. Penn testified that
23 finally they agreed that Roemer had to be paid, but they
24 also said that they couldn't pay him any two percent
25 payment like they were paying to other buyers, but they

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2 wanted to make a payment which would just cause Mr.
3 Roemer to be favorably disposed toward them, not to give
4 them any trouble, you might say to sort of keep the wheels
5 greased, and they indicated that possibly later on if
6 Mr. Roemer got new lines for them and helped their busi-
7 ness considerably then they were going to put him on a
8 two percent basis. But you recall Mr. Penn's testimony,
9 and it was very clear, was that this never happened, Mr.
10 Roemer never did go on the two percent basis because he
11 never performed that effectively for them.

12 You recall, also, that Mr. Penn testified
13 there were several payments from 1962 through 1965. He
14 couldn't recall exactly when the dates of these payments
15 were, he couldn't recall all of the circumstances, but
16 he did recall that some of the payments occurred in his
17 office and he gave you a description of what happened on
18 those occasions.

19 You recall there was also the testimony of
20 Chrystal Vorwitt. She testified that she recalled, as
21 Mr. Penn had testified, that they were using code names
22 and that the code names included the name Roemer and that
23 the corresponding name for Roemer was Martin Roemer.

24 She also testified that she had heard numerous
25 telephone conversations because her desk was located in

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2 such a way that she could hear what Mr. Penn was saying
3 on the telephone. She recalled hearing him call up on
4 the phone and ask for Martin Roemer, she recalled some
5 conversations in which Marty was on the other end of the
6 line, but she couldn't remember what was said in those
7 conversations. She also testified that she saw Mr.
8 Roemer in the office of Morton Penn on several occasions.

9 You recall Amy Dunn testified that she also
10 recalled this list. There were two lists, she testified,
11 that she typed in Germany, one was a list of code names
12 and it included the name Roemer, another one was a list
13 of real names and it included the name Martin Roemer.
14 She testified that prior to typing the code names that
15 she remembered Martin Roemer's name was used in connection
16 with electronics. She also testified that after the
17 code names were used that the name Romero started to be
18 employed in that connection, and she also testified that
19 after she returned from Germany she saw Mr. Romer in the
20 office of Morton Penn on one occasion and she told you
21 the circumstances under which she saw him. I will get
22 to those a little bit later.

23 Finally, ladies and gentlemen, you have the
24 records. I think it is important that we go over these
25 records in some detail.

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1 gtjw 55

2 You recall, first of all, it was established,
3 and your common sense would probably tell you that it
4 would be true, that not very many records were kept by
5 this business ISSE and, indeed, many of the records that
6 were kept were destroyed. However, it was also testified,
7 for example, one of the records obviously destroyed was
8 the list of code names. It was also testified, however,
9 that these records were recovered, some records, and they
10 came from two sources. One source was the document
11 seized in Germany in October of 1966 by Mr. Bachinger
12 and his colleague.

13 Secondly, you had the records that Mr. Penn
14 turned over to the FBI in November of 1969.

15 When you put those records together, ladies
16 and gentlemen, what do they show? They show that there
17 were at least six payments to Mr. Roemer or Romero in a
18 total amount of approximately \$12,500 between July 1962
19 and July of 1965. Also they show several meetings of
20 a social nature.

21 Ladies and gentlemen, it is important for you
22 to note in analyzing these documents that the big year
23 was 1963. The documents show that in 1962 there were
24 some social meetings and a payment of \$2,000. In 1963,
25 however, on February 21 there is a payment of \$2,000,

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2 in July there is a payment of \$2500 and in September, on
3 September 16, 1963, there is a payment of \$2000. Then
4 in 1964 the documents show a payment on April 23 of
5 \$1730 and in 1965, on July 22, or a letter dated July
6 22, there is a description of a payment of \$2500.

7 Let us go through the documents for just a
8 moment and I would like to indicate for you what the govern-
9 ment submits that they establish.

10 First of all, there is a document which was
11 retrieved from Germany, not from Mr. Penn but from Germany.
12 That document shows an entry on June 20, 1962 P.J. Moriarity,
13 MP, that is Morton Penn, dinner with MR, Martin Roemer.

14 The next document, ladies and gentlemen, is
15 a document turned over by Mr. Penn in New York, it doesn't
16 come from Germany. And it, as you can see, is a hand-
17 written slip obviously kept solely for his own purpose
18 and not sent to Germany. It refers to receiving a number
19 of packs, which you have heard testimony refers to
20 money that is received in the mail, and in addition it
21 shows paid out \$2000 to MR.

22 It is interesting there is a little bit
23 something written over there, ladies and gentlemen. You
24 can see the MR is written over. You might ask yourself
25 the question why he would write over it if he is trying to

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fool someone else. Is he trying to fool himself, ladies and gentlemen?

All right. What is the next document? That is a letter September 26, 1962. This one comes from Germany. It is a letter from Mr. Penn to Mr. Mintz and it says, "Just left Marty Roemer and all is going well here, too. Will also post you on developments."

The next document is a letter coming from New York, ladies and gentlemen, and that one includes, again, a notation apparently from Mr. Penn to himself, "Thursday September 27, drinks with Marty Roemer, \$10," nothing about a payment there.

The next one is another one of these handwritten slips. Again, as you can understand, this was recovered in New York and was not sent to Germany. It is dated February 20, 1963. It again refers to receiving packs of money in the mail and also on February 21, 1963, refers to \$2000 to MR, Martin Roemer.

Next in chronology, ladies and gentlemen, are two documents, and they tend to authenticate the documents that were turned over in New York because you have from German, ladies and gentlemen, the original. Turned over in New York, ladies and gentlemen, three years later, three years later, a carbon copy.

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You ladies and gentlemen can take these into the jury room with you and you can examine for yourself, and the government submits to you that there is no question whatever about Mr. Penn going back and trying to please the government by fabricating some documents, because what do you have here? You have him turning over a carbon copy in 1969, three years after the German authorities have seized the original in Germany.

What do these both refer to, ladies and gentlemen? Paid to MR on account, \$2500, July 1963.

Then you will notice, ladies and gentlemen, down on the bottom of the carbon copy is some additional writing on the original. Obviously Mr. Penn was keeping some additional notes that he was going to enclose at a later date.

Next in chronology, ladies and gentlemen, we come to the fall of 1963, three months later. You will recall 1963 was the big year.

On these documents, ladies and gentlemen, we start out with a letter dated October 4, 1963, and, first of all, Mr. Penn, in writing to Mr. Mintz, refers to 9,000 tickets. You have heard testimony, and the government submits that you would probably would have figured it out on your own even if there was no testimony,

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2 in the context of this letter tickets refers to dollars.

3 Then later on Mr. Penn tells Mr. Mintz, "You
4 will notice that I rounded out the figures with various
5 people only to make it easier, such as Romero and Mr.
6 Cotton on cleaning up old balances."

7 There is some additional discussion in the
8 letter which, of course, you are free to read.

9 Now, the question is, what was he referring
10 to when he talked about those 9,000 tickets? There are
11 five government's exhibits, ladies and gentlemen, which
12 tell you exactly what he was referring to.

13 One, turned over in New York three years
14 later, is the original handwritten accounting sheet that
15 Mr. Penn told you was his procedure, to keep these slips
16 of paper, the crumbled slip, then go on to a handwritten
17 accounting sheet or to dictate. What do we have here?
18 The handwriting accounting sheet showing that rounded out
19 payment, September 16, \$2,000. To whom? To Romero.

20 Then, ladies and gentlemen, we have the type-
21 written versions. Here, again, the carbon copies authenticate
22 the copies because we have the original turned over in
23 New York -- excuse me, the original turned over in Germany
24 that he sent to Mr. Mintz and the carbon copy turned over
25 in New York three years later, an exact duplicate copy,

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2 except for some handwritten entries by Mr. Penn on the
3 original. They show the same as the handwritten document
4 turned over three years later, September 16, 1963, and
5 we know it is 1963 because the letter refers to \$9,000
6 delivered in 1963 and here is the \$9,000, September 16,
7 Romero on account, \$2,000. The carbon copy, an exact
8 duplicate, of course, contains the same typewritten entry.

9 Next we have, ladies and gentlemen, you will
10 recall that I told you the letter was dated October 4.
11 It refers to some enclosed accounting sheets, these
12 accounting sheets. The handwritten document also continues
13 after October 4 for some additional entries and the govern-
14 ment has put in those additional entries which must
15 have been enclosed in a later letter, again the original
16 recovered in Germany in 1966, the carbon copy recovered
17 in New York in 1969.

18 Next in chronology, ladies and gentlemen,
19 at the end of the year we have a letter from Mr. Penn to
20 Mr. Mintz and he states in that letter a number of things
21 concerning the payoffs that he is making and he also
22 states later on a reference to Romero, he says, "There
23 is a balance to Mr. Cotton plus something should be going
24 through to Romero on which to date we have not yet
25 received additional figures."

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2 Now they start to space out, ladies and
3 gentlemen.

4 Excuse me, that letter was recovered in Germany.

5 This is another document recovered in Germany,
6 ladies and gentlemen, showing 1964, April 23, a payment
7 of \$1730, paid to Romero as per slip.

8 Next, ladies and gentlemen, we have a letter,
9 which is a letter from Mr. Mintz back to Mr. Penn. Here
10 we recovered the carbon copy in Germany in 1966. The
11 government would submit that it has some interesting
12 things.

13 First of all, it has a reference to Westinghouse
14 that we have been talking about a great deal and it is
15 dated July 21, 1965, something you might want to bear in
16 mind a little bit later.

17 An additional thing, ladies and gentlemen,
18 is that it, again, refers to Romero. Mintz says, "I am
19 doing everything possible to keep above water financially.
20 However, the very high commitments to Cotton, Romero,
21 Boyd, Cockburn are more than we can handle at the moment,"
22 showing Mr. Mintz' awareness of these payoffs.

23 Then, ladies and gentlemen, there is another
24 very interesting entry. You recall Mr. Hoffinger made
25 a great deal out of the fact that apparently Mr. Mintz

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didn't know about the fact that Chrystal Vorwitt was being paid by ISSE when she was really working for Uris Sales. Now, first off, ladies and gentlemen, the government would submit that there was no substantial basis for you to arrive at that conclusion. Mr. Penn was hardly cross examined about it and he is the one who would know about it. Miss Vorwitt is the one who just receives her check from time to time and she is not going to know what accounting methods are being used there. She testified she wasn't the bookkeeper and there wasn't any indication that Amy Dunn was the bookkeeper, either.

But recall Mr. Hoffinger said there was a big deal about the fact that in August of 1965 Amy Dunn was giving Mr. Mintz a lot of new information. Well, we know that is not true, because this letter dated July 21, 1965 states as follows:

"Actually, myself, Edith Schein, Amy Dunn, Chrystal Vorwitt and another girl in the Uris Sales office all on the payroll of ISSE and I doubt if the commissions from the state sidelines would even support their salaries."

So, ladies and gentlemen, there is no indication here that he is tricking Mr. Mintz at all. In fact, the evidence that you have before you indicates that Mr. Mintz

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is aware of everything and if Amy Dunn and Chrystal Vorwitt don't know that, well, it is not particularly surprising because their jobs is to be secretaries, they are not supposed to be bookkeepers.

What is the final document, ladies and gentlemen? A letter dated July 22, 1965, and it says \$2500 to Romero, again, a letter recovered in Germany, a letter from Mr. Mintz written to Mr. Penn.

Finally, ladies and gentlemen, there is another one of these handwritten slips recovered in New York, \$1800 MR. We don't know what date it is and it really doesn't show an additional payment. We don't know if there was an additional payment or not.

What additional evidence was there? Well, there was the testimony that later on, possibly in the middle of 1965, Mr. Penn wasn't sure, that Mr. Jones and Mr. Mintz tell Mr. Penn they are not pleased with Mr. Roemer, that he has not been doing what he is supposed to be doing and, therefore, they are not going to pay him any more money.

Penn tells this to Roemer and Roemer says, "Well, Okay."

Penn also testified that there may have been one more payment after that to clean up an old balance,

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but he said he believed so and he couldn't remember anything about it without having any document and we don't know whether there is such a document.

Then, ladies and gentlemen, you have the defense witnesses, Mr. Cox, Mr. Gilhooly and Mr. LaMarca. They worked at the New York headquarters with Mr. Roemer and I doubt that it escaped your notice that Mr. Cox testified that even now he is an employee in the firm that is partially owned by Mr. Roemer.

What did they all testify to?

They said that Roemer was in charge of electronics in New York. We knew that. That Jones was a major buyer in Europe, that Jones sent many orders through Roemer's department and that one some of the orders there were complaints by Mr. Roemer.

Now, ladies and gentlemen, you recall that Mr. Cox said on the Toshiba deal he thought that it wasn't a legal problem, that it was that the price was too high. But what else did he tell you? Who came to the meeting? Mr. Penn came to the meeting with his attorney. Is there any reason to bring your attorney if it is just a question of price? Perhaps that is the reason why Mr. Penn remembers that it was a legal problem and perhaps it was a legal problem. The government submits that it

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really doesn't make any difference. The point is that there was such a meeting.

Then you will also recall Mr. Cox testified to something else that was very interesting. He testified that at the time of all these transactions he was aware of the fact that the name of Mr. Penn's company was ISSE or something like that indicating, ladies and gentlemen, his awareness of exactly who Mr. Penn worked for. And, in fact, as the defense case went on, it became apparent that there wasn't any doubt at all in the New York office of the PX system who Mr. Penn worked for and what Mr. Penn was up to.

But there was, ladies and gentlemen, some doubt about exactly when this awareness broke. The witnesses generally tended to testify on direct examination that this awareness arose, that is, everybody started to know about Mr. Penn, some time around the time that Mr. Roemer returned in 1964 from his trip to Europe and they weren't able to place that very well with any certainty, although it appears it was sometime in the middle of 1964. We don't know exactly when.

Mr. Cox, on cross examination, then, however, said that Mr. Roemer was just complaining all of the time, from the very beginning on the Toshiba transaction

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and everything else.

We think or the government submits, anyway, that when you analyze that testimony you will come to the conclusion that by and large all of it indicates that the reports started in 1964 and that Mr. Cox really didn't have any substantial recollection of exactly when the reports were made, and it is quite understandable that he wouldn't.

Now, isn't there something else that was very interesting about Mr. Cox' testimony and possibly you picked it up? And that was that Mr. Roemer was not the only one who was making these reports. Don't you recall how he testified time after time in cross examination, anxious to point out the fact that it was Mr. Roemer and other buyers who were making the suggestions that Mr. Penn was making payments to Mr. Jones. Don't overlook that at all, ladies and gentlemen. I am going to come back to it in a little while.

The next thing that occurs , of course, is that in 1966 the documents were discovered in Germany. The next thing that happens is in 1968 Mr. Roemer is interviewed and, as I have indicated earlier, he says that he really knows Mr. Penn, he only met him once, he can't remember much about it and he certain doesn't tell anyone

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2 about all of his suspicions.

3 You know, this man, Mr. Roemer, had he wanted
4 to be truthful, would seem to have been a gold mine for
5 the FBI agents when they walk in and they say, "We are
6 investigating possible kickbacks in the Exchange system
7 and we would like to talk to you about it."

8 If he had wanted to be truthful, can you imagine
9 the information he could have given him? Now, he could
10 have said, "Yes, as a matter of fact, I am getting the
11 kickbacks."

12 But if he wanted to even be consistent with
13 what he was telling his own colleagues, wouldn't his
14 statements to them have been incredibly different, markedly
15 different from what they, in fact, were?

16 The written statement that they took down,
17 the FBI agents, is in evidence and you are entitled to
18 look at that. Ladies and gentlemen, the government
19 submits that you should also consider the testimony given
20 by agents Hilly and Lee which substantially is similar
21 to the written document.

22 Don't get the idea, ladies and gentlemen,
23 that this was a written document created several days
24 after the interview from straight recollection. The
25 testimony is clear that they took notes, that the normal



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practice at the FBI is that they dictate from their written notes on to the final report, they then check over the final report against the notes and finally they destroy the notes. That is the normal practice, ladies and gentlemen.

All right. The government submits that when you put all of this evidence together, when you look at every bit of it, ladies and gentlemen, and you see how it fits together, the conclusion that you are going to come to is that Mr. Roemer's guilt is, indeed, established beyond a reasonable doubt.

What is the charge? The charge is a conspiracy to defraud the United States, that is, he entered into an agreement that kickbacks would be paid and that he would accept those kickbacks whether or not he did anything to earn those kickbacks, that the people that he entered into this agreement with or who were part of the agreement were Mintz and Penn and that Penn was certainly the person that Mr. Roemer was dealing with, that he did take payments and that those payments were made.

Now, what is the proof, ladies and gentlemen?

The government relies on the documents that have been introduced into evidence. We also submit for reasons that I will get to later that you should accept

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2 the testimony of Mr. Penn concerning the payments made
3 to Martin Roemer. We submit that also you have before
4 you the testimony of Vorwitt and Dunn, the two secretaries,
5 and in addition you should strongly consider the false
6 statements, the lack of candor that Mr. Roemer displayed
7 before the agents Hilly and Lee when he was interviewed
8 by the FBI.

9 Now, Mr. Hoffinger referred at one point, ladies
10 and gentlemen, to the possibility that this case could
11 become a case against Mr. Penn, and the government sub-
12 mits to you that that is exactly what the defense here
13 has tried to make the case.

14 However, ladies and gentlemen, the case does
15 not turn on the testimony of Mr. Penn. The government
16 submits that it turns on all of the evidence put together
17 and the government submits that the best way that you
18 can analyze that, ladies and gentlemen, is if we just
19 go through an intellectual exercise here for a moment,
20 and that is what I would like to do with you. Throw
21 away all the testimony of Mr. Penn and see if you can't
22 for a minute forget everything he said and then let's
23 see what you would have established in this case.

24 Well, first of all, ladies and gentlemen, you
25 would have established a number of documents. We are not

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2 talking about where they came from. You have a German
3 taxman who tells you that he seized them in a certain
4 office in Germany. Forget about Mr. Penn.

5 You also got, ladies and gentlemen, an FBI
6 agent who retrieved some documents in 1969, three
7 years later. Forget where they came from. Just suppose
8 they were dropped on the FBI's doorstep. Remember, we
9 are not considering the testimony of Mr. Penn at this
10 point.

11 You go through those documents, you analyze
12 them in light of your own common sense. And what do they
13 tell you? They tell you this is a relatively crude
14 accounting system. Obviously we have someone here who
15 is trying to keep records and he is trying to keep track
16 of packs of things that come in, he is apparently trying
17 to keep track of some payment because we see 2,000 here,
18 we see 4,000 here, we see 1750 for dinner. Obviously
19 it is some kind of crude accounting system. We know it
20 is somebody involved in the PX system because we see the
21 letterhead there. We see the references to packs and
22 to pcikets and to greeting cards, and perhaps we use our
23 common sense we will figure out that they must be refer-
24 ring to money there.

JUDGMENT AND PROBATION COMMITMENT ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
UNITED STATES OF AMERICA,

v.

No. 70 Cr. 130

MARTIN L. ROEMER,

Defendant.

-----X

In presence of the attorney for the government, the defendant appeared in person on this date (12-12-74) with counsel, Jack Hoffinger, Esq.

PLEA: NOT GUILTY

There being a verdict of GUILTY.

Defendant has been convicted as charged of the offense of unlawfully, wilfully and knowingly did conspire, confederate and agree together and with other persons, unknown to the Grand Jury, to defraud the United States of an concerning its governmental functions and rights.

(Title 18, U.S. Code, Section 371.)

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court,

the Court adjudged the defendant guilty as charged and convicted.

It is adjudged that the defendant is sentenced to ONE (1) YEAR, and FINED \$5,000. Execution of the sentence of imprisonment is suspended. Defendant is placed on probation for a period of ONE (1) DAY.

Fine to be paid within 60 days. Fine is a committed fine.

DOCKETED AS A
JUDGMENT #74,975
ON Dec. 18, 1974.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk.

By: _____
Deputy Clerk

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

v.

No. 70 CR 130

MARTIN L. ROEMER,

Defendant.

-----X

S I R :

PLEASE TAKE NOTICE that MARTIN L. ROEMER hereby
appeals to the United States Court of Appeals for the Second
Circuit from a Judgment of Conviction entered against him
before the Hon. Inzer B. Wyatt, United States District Judge
for the Southern District of New York, on December 12th,
1974 wherein the defendant was convicted of one count of vio-
lating Title 18, United States Code, Section 371. As a result
of this conviction, the defendant was sentenced to a suspended
term of imprisonment and placed on probation for a period

of one day.

Dated: New York, New York
December 17th, 1974

Yours, etc.

LA ROSSA, SHARGEL & FISCHETTI
Attorneys for Defendant
MARTIN L. ROEMER
Office and P.O. Address
522 Fifth Avenue
New York, New York 10036
687-4100

By: _____
A Member of the Firm

TO:

HON. PAUL J. CURRAN
United States Attorney
Southern District of New York
26 Federal Plaza
New York, New York

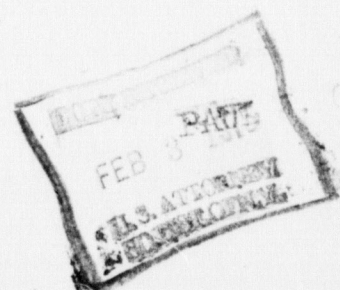
Defendant's home address is:

214 Taylor Road
Paramus, New Jersey 07652

Service of ^{Two (2)}~~three (3)~~ copies of the within
is hereby admitted

this day of

.....
Attorney(s) for



RECEIVED